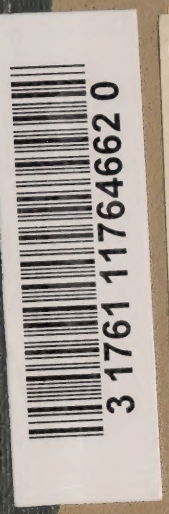

Canada. Committee Appointed to Investigate into the Administration of the Pension Act.

Report. 1933

[Commissions and Committees of Inquiry]

REPORT

OF THE

COMMITTEE APPOINTED TO INVESTIGATE INTO THE

ADMINISTRATION OF THE PENSION ACT

PRINTED BY ORDER OF PARLIAMENT

OTTAWA
F. A. ACLAND
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OTTAWA, January 24, 1933.

In the matter of the Committee appointed to carry on an investigation into the administration of the Pension Act, and to report thereon with such suggestions or recommendations as may be deemed advisable.

The Hon. Colonel MURRAY MACLAREN, C.A.M.C., C.M.G., M.D., C.M., M.R.C.S.
Minister of Pensions and National Health,
Ottawa, Ont.

SIR,—I have the honour to transmit to you herewith my report, as Chairman, signed and concurred in by three other members of the committee.

I am also transmitting to you the report of the Vice-Chairman, signed by himself and three other members of the committee, together with the qualifications set forth in their respective personal reports setting forth their observations.

I am further transmitting the report of the Reverend John Kelman, a member of the committee, who concurs in the Vice-Chairman's report.

In addition I am transmitting a fourth report on behalf of Lieut.-Colonel L. P. Sherwood, which report is concurred in by Brig.-General H. F. McDonald.

I have left with Mr. E. H. Scammell, the secretary of your department, who is also the secretary of this committee, all the documents, evidence and Minutes of the proceedings to be kept by him under your direction and control, as it would be rather cumbersome to transmit them herewith.

I have the honour to be, sir,

Your obedient servant,

(Sgd.) L. A. AUDETTE,
Chairman.

58889—1½

Administration of the Pension Act

OTTAWA, January 24, 1933.

In the matter of the Committee appointed to carry on an investigation into the administration of the Pension Act, and to report thereon with such suggestions or recommendations as may be deemed advisable.

To the Hon. Colonel MURRAY MACLAREN, C.A.M.C., C.M.G., M.D., C.M., M.R.C.S.
Minister of Pensions and National Health,
Ottawa, Ont.

Whereas by an Order in Council of the 4th August, 1932, it was provided as follows:—

The Committee of the Privy Council have had before them a report, dated August 3, 1932, from the Minister of Pensions and National Health, stating that representations have been made by the Associated Veterans, comprising the Army and Navy Veterans in Canada, the Amputations' Association of the Great War, the Sir Arthur Pearson Club of Blinded Sailors and Soldiers, the Canadian Pensioners' Association of the Great War and the Canadian Legion of the British Empire Service League, respecting the administration of the Pension Act, and, in order that there may be a thorough examination into the administration of the said Act, the minister recommends as follows:—

1. That a committee, consisting of the following eleven members, the first five named have been selected by their respective organizations, be appointed:—

Mr. Richard Myers, representing the Amputations' Association of the Great War and the Sir Arthur Pearson Club of Blinded Sailors and Soldiers.
Mr. Frank G. J. McDonagh, representing the Canadian Pensioners' Association of the Great War.
Colonel W. C. Wood, representing the Army and Navy Veterans in Canada.
The Reverend John Kelman, representing the Tuberculous Veterans' Section of the Canadian Legion, of the British Empire Service League.
Brig.-General Alex. Ross, C.M.G., C.S.O., District Court Judge, for Saskatchewan, representing the Canadian Legion of the British Empire Service League.
Lieut.-Col. John Thompson, K.C., D.S.O., Board of Pension Commissioners.
Colonel L. P. Sherwood, V.D., A.D.C., Pension Appeal Court.
Brig.-General H. F. McDonald, C.M.G., D.S.O., Pension Tribunal.
Dr. Ross Millar, Department of Pensions and National Health.
Lieut.-Colonel C. B. Topp, D.S.O., M.C., Chief Pensions Advocate, Veterans' Bureau.
The Honourable T. Rinfret, Judge of the Supreme Court of Canada, Chairman of the Committee.

2. That the said committee be empowered to carry out an investigation into the administration of the Pension Act, and to report thereon with such suggestions or recommendations as may be deemed advisable.

3. That there be paid to these members of the committee residing outside of Ottawa, actual railway transportation expenses, plus a per diem allowance of $10 to cover all other expenses, when attending meetings of the committee.

4. That the report of the committee be submitted to the Minister of Pensions and National Health by the 1st December, 1932.

That committee concur in the foregoing recommendations, and submit the same for approval.

And whereas, by an Order in Council of the 2nd December, 1932, it was further provided as follows, viz.:

"The Committee of the Privy Council, on the recommendation of the Right Honourable Richard Bedford Bennett, the Prime Minister, for the Minister of Pensions and National Health, advise that the Minute of Council of the 4th of August, 1932 (P.C. 1741) whereby a committee was appointed to conduct an investigation into the administration of the Pension Act be amended by the substitution of the Hon. Louis Arthur Audette, retired Judge of the Exchequer Court of Canada, as Chairman of the Committee, for the Hon. T. Rinfret, Judge of the Supreme Court of Canada, whose judicial duties require the whole of his time."

58889—2

Whereas your committee, in pursuance of the authority and power vested in it by the said Order in Council, having duly proceeded to investigate and having heard the complaints of the several soldiers' associations submitted in writing, and having at the request of the soldiers or their representatives, heard oral evidence in respect thereto, now respectfully submit:—

The grounds for complaint, while numerous and varied, upon analysis reduce themselves into the following classes; (1) The working out of the Pension Act of 1930 and the amendments thereto, has not proved as satisfactory as was anticipated. (2) The system is radically wrong and should not be allowed to continue. (3) The expenses are enormous with no satisfactory results. (4) Want of giving due weight to the Benefit of the Doubt clause (Section 73 of the Act.)

Your committee deems it unnecessary to review in detail all the grounds for complaint, because it is hoped the recommendation herein arrived at will answer and provide a remedy for most of them, or at any rate the most serious ones, and because a number of them are beyond the scope of the submission, or involve questions of policy and claims to relief—thereby outside the scope of our submission.

Your committee, therefore, acting within the scope of its purpose and power, begs to submit the following recommendations:—

1. PENSION TRIBUNAL

That the Pension Tribunal be forthwith abolished and the Pension Act amended to effectuate such purpose.

There is no *raison d'être,* no occasion, for the existence of two courts of first instance having identical jurisdiction and power, passing and rendering judgment upon the same matter, as is now being done by the Board and this Tribunal.

This multiplication of machinery has obviously created congestion, delay and a multiplication of work absolutely unnecessary to attain the ends of justice or the aims of the Pension Act.

With the abolition of this enormously expensive Tribunal, all crown appeals (including what has been called the automatic appeals) by commission counsel from the Tribunal will also necessarily disappear, a subject of complaint greatly stressed by the representatives of the soldiers. Moreover, if the life of the tribunal were limited to the period required for the full and final discharge of the work before it, there would be no more arrears after a few months (see pp. 76, 77 of Proceedings) even if its present rate of progress were maintained in disposing of its business.

The present incumbents in office as members of the Tribunal should not be summarily dismissed, but should be treated generously either by giving them new positions or by compensating them for the balance of the statutory period of their office.

2. BOARD OF PENSION COMMISSIONERS FOR CANADA

The abolition of the Pension Tribunal will leave but two bodies to deal with the question of soldiers' pensions—a tribunal of first instance the commission, and a court of appeal.

Now, the main subject of complaint all through these proceedings is congestion and delay before the Pension Commission, the Pension Tribunal, Pension Appeal Court, and the Veterans' Bureau.

The abolition of the Pension Tribunal answers those complaints in so far as they are ascribed to the Tribunal.

Dealing with the commission, it is well to say *in limine*, that the congestion and delay in the business of that body, is more apparent than real.

The chairman of the Board, in the statement prepared for the committee in September, 1932, stated that 93 per cent of all applications awaiting decision by the commission are repeaters, i.e., their claims have already been considered and reconsideration is being asked, or they are already pensioned for one or more conditions and are asking a pension for some new condition, and adds, "there are no cases of urgent treatment awaiting decision."

We are also told by the Chief Pension Advocate, with respect to his branch (page 19) that "about 75 per cent of the cases are such which have no prospect whatever of success and undoubtedly delay the consideration of the type of case where there is room for very careful enquiry."

The Chairman of the Board of Pension Commissioners having stated before the committee how matters in his department stood, one of the members of the committee on behalf of the soldiers, asked that for the satisfaction of the public, a sub-committee be formed to review the statement made by the chairman; the sub-committee to ascertain in a general manner to what extent the work of the Board is being hampered by unmeritorious cases; cases of a frivolous character; to what extent the cases show lack of preparation and what way or method might be found to speed up the work.

The sub-committee was duly appointed, being composed of two members of the committee representing the soldiers and two members representing the department. It has examined a substantial number of departmental files and has found *inter alia* that, in a very substantial percentage of cases, the applicant is already in receipt of pension for other conditions.

The want of proper preparation by the applicants before the presentation of their claims to the Board has occasioned a rejection of their claims for want of proper evidence.

There is before the Board a group of approximately 5,146 cases which have been deferred, including these cases considered as having small likelihood of favourable decision. This procedure has been adopted to favour the applicant in allowing him to have his claim reviewed upon further and better evidence. Among this number of claimants there is also a large proportion of them who are in receipt of a pension for one or more conditions.

Among the cases of first application, the delay is occasioned by the fact that they are of debatable merit and furthermore, present insufficient evidence for reaching a favourable decision.

The soldier himself in many instances seems to be indifferent to the duty of completing his case and supplying the necessary evidence; he keeps away for an undetermined length of time.

Initial adequate preparation of a claim is of paramount importance and necessity before it is presented to the Board.

(*a*) Therefore, it is submitted that a properly drafted form of claim should be supplied by the commission to any applicant just as soon as he makes his intention of making a claim. To this form should be attached a questionnaire in the form of Exhibit 4-U, with the addition of a question respecting his pre-war services and condition.

(*b*) The delay occasioned by an appeal by commission counsel from the Tribunal will have disappeared with the abolition of the Pension Tribunal.

(*c*) That the personnel of the Board of Pension Commissioners be increased to nine, and that the Chief Medical Adviser be ex-officio a member thereof. Two of the new members to be appointed for the usual statutory term of ten years and four for the period of three years only.

(*d*) From this increased personnel of the Board there should be established Travelling Boards, under the control and direction of the Chair-

man of the Board of Pension Commissioners, consisting of a quorum of two persons to include, if possible, one lawyer and at least one medical man, preferably those who have had previous training and experience under the Pension Act. The Board of Pension Commissioners and the Travelling Boards, duly constituted courts for the purposes herein, should also be vested with all the powers of a commissioner under Part 1, of the Inquiries Act, and exercise any discretion conferred by the Pension Act.

The commissioners and the Travelling Board, if possible, should meet informally, the applicant, his witnesses, pensions advocates, medical examiners, and any other interested parties and hear the grounds upon which the applicant makes claim and the evidence in support thereof. All Travelling Boards to take full notes of such proceedings and in arriving at a pronouncement, should endeavour to maintain uniformity of decision.

(*e*) All applications for a pension should in the first instance be made to the Board at Ottawa, and if the application is meritorious and urgent, it should be dealt with without delay. If the application is granted, it should be acted upon at once and the pension paid as soon as possible. If the pension is refused on the material first supplied, the Board should so inform the applicant, giving the grounds for such refusal at that date, informing him further that if, within sixty days, additional evidence is submitted, reconsideration of the claim will be be given and that the applicant has the right to renew his application in person or by representation for hearing before a quorum at Ottawa, or before a Travelling Board with or without further evidence. Furthermore, to inform him that he can have the help and services of the Veterans' Bureau in promoting his claim. If nothing is done within the said sixty days, the application will stand "not granted"; but may thereafter be renewed only upon special application with new and relevant evidence. This would *pro tanto* relieve the apparent congestion before the Board. The soldier thereby preserving, as provided by the Act of 1931, the right and opportunity to appear at all times before the Commission or the Travelling Board.

(*f*) All cases now submitted to the Pension Tribunal which have not been disposed of should, at the option of the applicant, either be dealt with by the Travelling Boards composed of the new appointees who have not originally passed upon the claim, or be sent direct to the Pension Appeal Court. The new appeals to the Pension Appeal Court would hereafter be in the main, only those on behalf of the applicants, and all appeals now pending before the Appellate Court should be dealt with and finally pronounced upon by that court after hearing both the commission counsel and the pensions advocates.

(*g*) All cases should be properly prepared and presented as at present by the pensions advocates as it is obviously impossible for the average applicant to do so satisfactorily and properly prepared cases can be disposed of more expeditiously. On the appointment, in future, of pensions advocates, lawyers only should be selected to look after the interests of the soldier. Indeed, it is of cardinal importance to secure the highest possible degree of efficiency in the advocates.

It appears that there is no difficulty in the Veterans' Bureau to keep abreast of business and that the congestion, (pp. 40-47) is due to the fact that the applicants have not given the information which is necessary for the consideration of their cases. The delay in a large measure is due to the indifference of the applicant.

The Crown, in the name of the Minister of Pensions and National Health, will always be at liberty to appeal from the finding of the Board of Pension Commissioners for frauds, misrepresentation or any other cause or reason whatsoever to protect the interest of the State.

In the course of one of our last meetings, the Chairman of the Board of Pension Commissioners, intimated that out of the 5,146 cases above referred to, 1,684 had been disposed of by the 15th December, 1932, reducing these figures to 3,462. Furthermore, that on the 15th January, 1933, these figures have been still further reduced by 300 with the expectation that the balance will easily be disposed of within a short reasonable delay.

3. PENSION APPEAL COURT

The Pension Appeal Court, as a court of appeal and review, should continue to function as now constituted. Any two members thereof shall constitute a quorum and may lawfully hold court, and in the event of a difference of opinion between the two members, the appeal shall be re-heard before a bench of three members. The present vacancy should be filled without delay by a barrister or advocate of at least ten years' standing at a bar of any of the provinces of Canada; all further appointments to this court to be subject to this condition.

The court seems up to date in so far as the preparation of the cases is concerned. It takes some time for the Veterans' Bureau to properly prepare the cases brought before the Court, and it is essential that the cases should be properly prepared, and haste might prove detrimental to the soldier.

However, there is quite an accumulation of cases before the court standing for consideration and hearing, and with the object of *temporarily* helping the court to dispose of such accumulation of business, the president of the court should be vested with the full and untrammelled power to request, in writing, the attendance of a judge of a Superior or High Court of Justice in Canada, for such period as he may deem necessary, to sit with a Member of the court on a quorum of two to help in the hearing and disposal of such appeal.

Any such judge called in to sit as a member of the court, will be entitled to his travelling expenses plus $10 per diem living allowance together with the additional sum of $15 to cover all incidental expenses occasioned by his displacement.

All appeals to this court against any finding or decision of the Board of Pension Commissioners, shall be instituted or lodged within sixty days of the day of such pronouncement by the Board or within such further time as the court or a judge of the Court of Appeal shall allow.

The court should be vested with the same power which the Supreme Court of Canada, an appellate tribunal, has with respect to the right to receive further evidence.

The court should be given the power and jurisdiction as enacted by section 93 of chapter 35, R.S.C. 1927, that is:—

"The Pension Appeal Court, or a judge thereof, may, if it is considered for the ends of justice expedient to do so, order any further examination, before either the Court or a Judge thereof, or other person, of any witness; and if the party on whose behalf the evidence is tendered neglects or refuses to obtain such further examination or evidence, the Court or Judge in its or his discretion, may decline to act on the evidence."

Your committee is of opinion that by giving the court power to take further evidence, it will obviate such delay as must now occur if the matter is sent back to the Board. With the evidence adduced before the Board, supplemented by such further evidence as the court may deem proper to admit, the fullest measure of justice may be attained with a greater degree of expedition.

BENEFIT OF THE DOUBT (Section 73)

This section as enacted must be taken to disclose the intention of Parliament. Courts do not make laws but interpret them. Primarily there must be a doubt before that clause can be applied. Reading some decisions of the Pension Appeal Court upon that section, it must be found that the Court went as far as possible under the circumstances, perhaps somewhat further than a civil court would have upon similar legislation. Indeed one must not confuse the question of burden of proof with the question of benefit of the doubt. From reading some of the memoranda supplied, it would seem that this criticism means that what the soldiers are seeking is that the moment a person has become an applicant (as defined by section 2 of the Act) the *onus* would then be thrown upon the Crown to show he is not entitled to a pension—otherwise he would be.

This is a question of State policy and not of administration as coming within the scope of the submission.

It is submitted that while the changes above recommended may appear somewhat drastic, their adoption will in no wise interfere with the beneficial operation of the Pension Act in behalf of those whose interest it was designed to serve.

All of which is respectfully submitted.

(Signed) L. A. AUDETTE
(Signed) JOHN THOMPSON
(Signed) C. B. TOPP
(Signed) ROSS MILLAR

Ottawa, January 24, 1933.

REPORT SUBMITTED BY BRIG.-GEN. ALEX. ROSS, C.M.G., D.S.O., V.D., VICE-CHAIRMAN, AND MEMBERS OF THE COMMITTEE

I. SCOPE OF REFERENCE

It should at the outset be clearly understood by all interested in the subject, that the scope of the enquiry which has been carried out by this committee is strictly limited. In the words of P.C. 1741 of the 4th of August, 1932, by which the committee was set up it is expressly empowered "to carry out an investigation into the administration of the Pension Act and to report thereon with such suggestions or recommendations as may be deemed advisable. The operation and administration of the Pension Act of Canada has been the subject of enquiry on many occasions, namely on nine different occasions by a select committee of the House of Commons and once by a Royal Commission. On these different occasions the enquiry was directed not only to administration but also to the sufficiency of these provisions of the Act dealing with entitlement to determine whether its scope was sufficiently wide to cover deserving cases coming within the purview of an Act dealing with pensions for war disabilities. Thus gradually the provisions of the Act have been widened and liberalized.

The reason for the restriction of the present enquiry is apparent when the document which resulted in the appointment of the committee is considered. In January of 1932, the Associated Veterans of Canada representing all Veterans' organizations operating under Dominion Charter presented a memorandum to the Government of Canada, making certain specific representations in regard to the Pension Act. In that document we find the following statement:—

"The new machinery has now been in operation for fifteen months, and the personnel has thus had an opportunity of becoming thoroughly acquainted with the work. It is with regret, therefore, that the Associated Veterans receive from all quarters expressions of dissatisfaction, so much so, that they have felt it necessary to carefully re-examine the situation, and to present certain recommendations to the Government of Canada. In so doing it must be clearly understood that the Associated Veterans have no desire at this time to suggest any amendments which will in any way add to the burdens of the country under existing economic conditions. They desire only to secure such measures as will ensure to the Veterans of Canada, in full measure, the benefits to which they are entitled by virtue of existing legislation, and it must be clearly understood that the submissions following do not represent the maximum program of the Associated Veterans. Even if the existing machinery can be made to work as we believe it was intended to work, there are still many inequalities and injustices which remain to be rectified. Having regard, however, to the aforesaid existing economic conditions, and the suffering existing in this, as in all other countries, at the present time, the Associated Veterans have unanimously agreed to refrain for the time being, from pressing for extension of pension relief to remove the aforesaid injustices and inequalities, and are confining themselves simply to securing that to which we believe, the Veterans of Canada are now entitled."

Then follows an enumeration of specific complaints regarding administration and the operation of the existing machinery for the adjudication of pension claims.

Following the presentation of this document, negotiations took place and ultimately this committee was decided upon to investigate and determine whether the Act was being administered in accordance with the spirit of the legislation and in such a manner as to secure substantial justice to the veteran without undue delay or hardship. The Veteran body having patriotically refrained in a period of economic stress from pressing for enlarged benefits, the enquiry was confined solely to the sufficiency of the existing machinery to secure to the veterans of Canada the benefits already conferred by existing legislation. For this reason the committee have been unable to consider many specific and justifiable complaints received which properly fall under the head of entitlement.

II. CONDUCT OF THE ENQUIRY

There has been much misunderstanding as to the manner of the conduct of this enquiry and it is desirable that the principles upon which the Committee has proceeded should be thoroughly understood. Being appointed to investigate administration and administration only, it appeared to the Committee to be obvious that much of the information which was required in order to oscertain true conditions and the difficulties in the existing organization, if any, could best be obtained by examining the departmental records and the departmental officials charged with the duty of administration. For this reason, some time was spent in what may be described as "in conference" with departmental heads; the various suggestions put forth by the veteran bodies as to real or apparent grievances being discussed sympathetically with the departmental officers in charge of each branch. In this way the representatives of the veteran bodies have been afforded a unique opportunity and without restriction of examining the operation of every branch of the department and have had unlimited access to documents required. By this means it was possible at little expense to the public, to ascertain exactly to what extent congestion and delay existed and the number of applicants affected thereby. The committee could have heard witnesses for months testifying as to delays in prosecution of pension claims resulting from congestion or defects in the organization without obtaining nearly as accurate a picture of the true situation as has been obtained in this way. Nevertheless, the veteran representatives were from the outset keenly alive to the necessity of giving the soldiers of Canada the fullest opportunity of making representation for improving existing conditions, and upon the recommendation of the committee, at the instigation of the veteran representatives, the Government of Canada very kindly agreed to provide for the calling in of a number of witnesses from all over the Dominion, and due notice of this privilege was given after the committee completed the first part of its enquiry. Particular stress was laid upon the necessity of giving an opportunity to veteran organizations not connected with the organizations operating under Dominion Charter, to be heard, and an allotment of witnesses was reserved for this purpose. Unfortunately, very few took advantage of this offer. A number of briefs, however, have been submitted from these organizations, and it is felt in the main that the complaints made and suggestions offered conform with the general trend of the evidence adduced by witnesses appearing. We have been favoured with evidence from witnesses from every part of Canada, who have made an excellent contribution to the work of the committee. The nature of the briefs submitted and the evidence offered in support thereof indicates the careful study which has been given by veteran bodies to this problem and their views cannot be lightly regarded. It may be stated that the evidence throughout was given in a spirit of fairness and moderation which was most commendable and indicates the desire of the veteran bodies to co-operate with the Government in solving a difficult problem without placing additional burdens on the country. The evidence adduced by these gentlemen is such as to warrant us in the conclusion that the statement made by the veterans of Canada, when submitting their brief in January, 1932, that general dissatisfaction existed, was well-founded and this enquiry entirely justified.

III. SPECIFIC COMPLAINTS

As stated, the memorandum submitted by the Associated Veterans was responsible for bringing this committee into being after a discussion of the matters in issue with the full Cabinet and it should therefore be examined

to discover the specific causes of complaint. Reading the document as a whole the major complaints may be summarized as follows:—

(*a*) Congestion in the various adjudicating bodies particularly in the Board of Pension Commissioners and in the Pension Appeal Court.

(*b*) Consequent delay in hearing and determining applications.

(*c*) The extended use made by the Crown of the right to appeal accorded by the 1930 legislation and the marked degree of success attending such appeals.

(*d*) The insufficiency of the present Section 73 of the Act dealing with the extension of the benefit of the doubt.

(*e*) The necessity of more extended provision for the preparation of cases for consideration.

It should be noted however that the veteran body nowhere made specific charges for the truth of which they vouched. They simply recited complaints received and invited investigation and rectification.

Following the presentation of this memorandum, there were presented to the House of Commons, or motions of private members, certain returns showing cases pending, and undisposed of, which certainly gave every indication of great congestion and which furnished the basis for a debate on pension administration in the House of Commons on April 7, 1932. On the basis of these figures it was quite evident that members of parliament were greatly concerned in regard to the situation and many strong statements were made which must have been very disquieting to the public mind. For instance, one member is reported as saying, after stating, that by reference to the returns in question, there were 30,000 applications for pensions pending, " I think it is quite apparent to everyone in this House that at the rate these cases are being heard they will never be disposed of in the history of man. These applicants are dying all over the country and they have not yet been given an opportunity to be heard." Another member said, " the fact that we are now fourteen years from the conclusion of the war and that there are still 26,000 or 27,000 applicants for pensions whose cases have not been heard and who have no idea when they will be, does not speak well for the administration of the Act," and again— " there is a clogging of the machinery making it very difficult for a returned man to secure a pension." An even more serious congestion was put forward by another honourable member who said, " I have always had the suspicion that this ultimate tribunal is inclined to be influenced by too careful consideration for the treasury, as against the merits of the case affecting the returned soldier." These are very serious statements tending to produce unrest and distrust among the returned men of Canada and lack of confidence in the whole administration by the people of Canada and in themselves justified a full inquiry. In fairness to the departmental officers it should be stated that the Rules of the House requires returns to be made in the form asked without explanation or qualification. It is extremely desirable therefore that this committee should first definitely ascertain what is the actual condition to-day both as regards congestion and delay and give to the people of Canada a true picture of the situation with carefully considered proposals for any improvements which the evidence shows to be necessary or desirable.

In order, therefore, to properly appreciate the problem we must first ascertain to what extent congestion exists and endeavour to ascertain the cause.

IV. CONGESTION

On February 29, 1932, in a return to the House of Commons, the number of applications given as pending was as follows:—

Before the Board of Pension Commissioners (which presumably includes Veterans' Bureau)	23,900
Before Tribunals	2,650
Before Appeal Court	1,318
	27,868

On the 17th of September, 1932, a return as of July 31 was submitted for the information of this committee which gives the situation as follows:—

In Veterans' Bureau	15,942
In Board of Pension Commissioners	8,300
In Pension Tribunal	1,908
In Pension Appeal Court	1,456
	27,606

It will be noted therefore that there has been no appreciable change in the situation except that the Pension Tribunal has made considerable progress in overtaking its arrears while the Court of Appeal, notwithstanding the fact that it has worked to capacity, has gone behind.

The bald statement of these figures would certainly indicate an alarming situation and justify the demand for increased personnel to dispose of the accumulation. I was curious however to find whether these figures were accurate and whether they did in fact really convey a true picture of the situation and as a result I am prepared to find that the situation, while far from satisfactory, is not nearly as bad as these figures would lead one to believe. It is difficult to effect an exact reconciliation of the figures as statements submitted by different branches vary as to date but the result at which I have arrived is approximately correct. I will deal then with the different departments:—

(a) Veterans Bureau

According to figures submitted by the Chief Pensions Advocate, there were in his office on August 31, 1932, 14,338 cases pending. Of these 1,616 represented the residue of the cases pending before the Federal Appeal Board when it was abolished. On October 1, 1930, when the new machinery came into existence there were pending before the Federal Appeal Court 4,635 cases which automatically passed to the Tribunals and to Veterans' Bureau for presentation. To the 31st August, 1932—3,019 of these cases have been disposed of and 1,616 remained unheard. When the Veterans' Bureau came into being these were the first cases referred to the District Pensions Advocates and consequently received priority of attention. I endeavoured to ascertain the reason why these cases had not been proceeded with and the only reason obtainable is the indifference of the applicant. All were notified that the bureau was prepared to proceed with the cases and the committee has received no specific complaint from this group of indifference or inattention on the part of this bureau and consequently it is reasonable to infer that the large number of these cases will not be proceeded with if the applicant has not at this late date availed himself of the facilities afforded. In support of this I may point out that it is in evidence, and I have confirmed the statement by reference to the adviser, that when the Federal Appeal Court was established, one Soldiers' Adviser, to avoid any possibility

of claims in his hands being barred by the limitation of time for appeal, filed an appeal in every case of which he had record. Some four or five hundred of these appeals are represented in the residue and have never been heard of since. These appeals were made in 1925 and, when no steps have been taken to proceed in a period of eight years, we may reasonably presume that there is little likelihood of any further action.

Then 11,354 cases are represented by the so-called automatic reference. Under the 1930 legislation it was the duty of the Board of Pension Commissioners to receive all applications for payment under the Act and either to grant such applications, or, if the evidence was not sufficient, to refer them to the Chief Pension Advocate, and Chief Commission Counsel for hearing by the Tribunal. Applications come before the Board in many ways. A letter requesting pension unaccompanied by any evidence is an application. If a pensioner is examined in respect of his pensionable condition and another condition is found it is noted and is treated as an application even although there may be no evidence to connect it with service. Consequently the Board was required by law to refer all such cases and lay upon the tribunals the duty of hearing, at great expense, applications which might never have had any real merits. To correct this situation the law was amended in 1931 to provide that no case should be referred to the Tribunal except upon the request of the applicant, with the right to the applicant to submit from time to time to the Board new evidence in support of his claim. Incidentally, it has been found that this provision has proved to be most beneficial. Many cases have been established inexpensively before the Board, and in many more, the Board, having given full reasons for its decision, the applicant has accepted the decision and no more is heard of the claim, with the result that the number of references to the Tribunal has decreased to an amount which can easily be handled by that body in the near future. From the time the amendment mentioned came into effect on August 3, 1931, to August 31, 1932, only 2,744 cases were referred while from January 1, 1932, to August 31, 1932, 2,600 decisions were given by the Tribunal which indicates that, subject to limitations hereinafter referred to the Tribunal would have no difficulty in keeping abreast of the work.

Another provision of the 1931 Legislation was that all cases automatically referred by the Board of Pension Commissioners and which had not been reported by the Chief Pensions Advocate as ready for hearing by the Tribunal, were referred back for consideration by the Commission. These numbered on August 3, 1931—15,311. While these files were actually on charge to the Board of Pension Commissioners it was obviously useless to refer them back to the Board for reconsideration without further preparation and a very sensible working arrangement was arrived at between the Board and the Veterans' Bureau whereby these files would be retained in the bureau for further preparation before re-submission and reconsideration. These cases were distributed to the District Offices of the Veterans' Bureau with instructions to the District Advocates to secure further evidence with a view to reconsideration by the Board. As a result, 3,957 of these applications were between August 3, 1931, and August 31, 1932, resubmitted and in addition 550 were on September 22, 1932, ready for resubmission. Of the cases resubmitted as stated, after preparation, entitlement has been conceded by the Board in approximately 12 per cent of the cases, which is a striking commentary on the value of adequate preparation and the manner in which the time of the Board is wasted in considering cases not adequately prepared. Therefore as of August 1, 1932, 11,354 of the cases on hand in the Veterans' Bureau represented these cases automatically referred. Deducting from the 13,701 cases in the hands of the bureau the 1,316 old Federal Appeal cases which the bureau has not been able to prepare sufficiently for presentation to the Tribunal through lack of cooperation by the applicant so far as we have been able to ascertain, and the 11,354 automatic references which have already

been in the hands of the bureau for over a year in course of preparation and in which evidence sufficient to warrant resubmission has not yet been secured, we find that there are only 731 new cases in the bureau which cannot be considered an inordinate number, considering the length of time required to secure even the volume of evidence necessary to give the applicant the benefit of the doubt.

I pressed the chief pensions advocate for reasons covering inability to bring these cases to completion; particularly as to whether inadequacy of staff was a contributing cause. He is inclined to the opinion that his staff is sufficient for this purpose but my own impression is that the preparation of cases for presentation to the Tribunals takes up so much of the time of his staff that they may not be able to give that attention to preparation of new claims which is necessary. He mentioned, however, as one reason for the delay in re-submitting these files, that it was found in many cases the applicant was not availing himself of the opportunities offered and was not co-operating with the bureau in the preparation and presentation of this case. It was obviously impossible for the committee to obtain evidence of this fact, but this is undoubtedly a contributing factor, although to what extent we are unable to say. I am not prepared, as the chairman has done, to find that this condition is universal. From his general knowledge of these cases, the chief pensions advocate, is of the opinion that many of them can never be established. However, we have the fact established that 4,280 of these cases have been submitted to the board for reconsideration after preparation together with 2,685 new claims. Of this total of 6,965—652 have been conceded. 4,881 were not conceded, and no decision given on this balance. Out of 5,533 cases which have been considered, entitlement has been given in 652 cases or 12 per cent. It is impossible to determine what proportion of these entitlements were given in respect of the "automatic reference" cases, but undoubtedly a number of them would be included. It may be assumed, therefore, that in the residue there are cases of merit in which justice has been delayed by the congestion existing and even although one may be pressed by the conviction that the number so delayed may be very small, yet it is imperative that means be devised of so adjusting the machinery that these cases may receive prompt attention. I am quite satisfied on the evidence that these 13,701 cases do not represent that number of potential pensioners nor anything approaching that figure, no matter how liberally the discretion of the adjudicating bodies may be exercised. The situation indicates the necessity, however, of some system being devised which while not impairing the principle of "no Finality" will at the same time remove from the active files those cases in which the applicant is not actively pursuing his claim. It will never be possible for us to arrive at any opinion of the situation as long as the merest suggestion of a claim is carried as a possible claim.

While it was not possible to adequtely examine all of these cases it should be noted up to March 31, 1932, out of 25,767 cases dealt with, $33\frac{1}{3}$ per cent were classified as severe disabilities, while $66\frac{2}{3}$ per cent were classified as minor and congenital conditions. Also that 30 per cent of the total were already pensioned for some condition.

(b) Board of Pension Commissioners.

When we come to analyse the work of the board we find that as of July 31, 1932, they were reported as having 9,070 cases on hand. That is a formidable figure but subsequent investigation reveals that it is not nearly as formidable as it looks.

When the 1931 legislation was passed and the automatic references abolished, the board in order to keep abreast with its work, overtake the accumulation being prepared, and give due consideration to urgent cases, found it necessary to develop a new system. Accordingly, the Medical Branch was directed to classify all applications submitted to the board into four classes, (1) Cases

requiring urgent medical treatment, (2) Cases obviously in, (3) Border line cases, and (4) Cases in which the evidence submitted did not indicate any hope of entitlement. A certain number of these cases were submitted to the board each day and all of the classes 1, 2 and 3, reviewed and a decision given. Class 4 cases were laid on one side and reviewed again by a designated officer to ensure that no mistake in classification had been made and after such survey and removal of any files incorrectly classified, were simply put away without decision. In this way 5,070 applications were disposed of up to August 31, 1932. (We are advised by the chairman of the board, that since that time some 1,600 of them have been reviewed and a decision given although as indicated by an examination made, few were in a state of preparation as to warrant a favourable decision.) No decision has been given and the application may be renewed at any time. We have taken the precaution to examine these files sufficiently to ascertain that they are properly classified; but the fact remains that these men having submitted their claims are still in a state of suspense. The board is to be commended for taking action to ensure priority for meritorious cases yet the fact remains that the system operates harshly on these others who uncertain of their fate blame the board for delay and who if advised of the reason for refusal of grant might be securing evidence which would get their claims into the preferred classes. Under the circumstances the board has done the best it could, but, the congestion resulting, while it may not have deprived any person of a pension, yet has created a situation which must be corrected. And here it should be added that we have taken the precaution to draw at random several hundred of these files and also of the "automatic reference" files and examine them as to their character and state of preparation. This work was done by a sub-committee the report of which I attach hereto as it is an extremely valuable contribution to this investigation.

This leaves 4,070 claims in the offices of the commission. Of these, 2,300 were in the review branch of the board. Now this branch does not deal with disabilities at all. It deals solely with questions arising out of pensions already granted, such as, applications for increased pension in respect of a newly born child, application for pension in respect of a newly married wife, applications for information as to pensioners' rights to further entitlement and so on. Practically the only contentious matters to come before this Branch are in respect of dependent parents and the greater number of the other applications never have to go to the board for decision, they are automatic. The volume of these applications is fairly constant and will be for some years to come. It is in evidence and seems fairly apparent that this branch can deal with the greater number of its so-called applications in from 8 to 10 days. It can hardly be said under these circumstances that it is congested.

There remains 1,700 applications in the Medical Branch in course of preparation for submission to the Board. These include files containing correspondence *re* entitlement, claims *re* assesment which may never reach the Board being disposed of by the Medical Branch and claims for new entitlement, or entitlement in respect of another condition. Dr. Kee the Chief Medical Adviser of the Board, gives the figure of new entitlements in respect of disability as about 400. If, therefore, the 11,300 cases in the Bureau and 5,070 cases considered as not disclosing grounds sufficient to warrant a decision, are eliminated it is apparent that the Board is fairly well up to date on current work, but until all these cases mentioned can be properly reviewed and passed upon it is obvious that some men may be suffering by reason of delay. The extent of this cannot be accurately determined but it can be ascertained approximately in this way. In cases referred under the automatic reference the Veterans' Bureau has as I have already indicated prepared and submitted a number of claims with a measure of success. It is unlikely that this percentage of success will be maintained as the cases submitted doubtless represent the best of those under review but

assuming that the same percentage was maintained there would out of the 11,300 cases be 1,595 cases in which entitlement would after preparation be conceded, leaving 9,605 cases which would be "not granted." Now between January 1, 1932, and August 1, 1932, the Board heard and disposed of 1,621 claims. In that time 1,916 claims were referred to the Tribunal at the applicants' request, approximately 15 per cent. On this basis we might expect 1,440 of these cases now in the Veterans' Bureau to reach the Tribunal. The percentage of success in the Tribunal is approximately 40 per cent, so 500 would succeed there, but on appeal probably 160 would disappear. Therefore out of this accumulation we might expect that at the outside 2,200 might ultimately secure entitlement in some degree. On the same basis of the 5,000 reserved cases about 1,000 would reach entitlement finality. Therefore in this Bureau and Board we have to-day probably 3,200 prospective pensioners whose claims are being delayed not entirely due to congestion but due probably in a large part to their failure to perfect their cases. This figure I may say, is quite the outside one. There is no reason for the 11,300 claimants whose claims have been in the hands of the Bureau since August, 1931, at least being delayed in their rights by reason of the inaction of the Government Bureau. It is in evidence that both the Canadian Legion and the Army and Navy Veterans in Canada maintain free Service Bureaus for preparation of cases and it might reasonably be presumed that a large percentage of these 11,300 claimants, if they found no progress being made would have resorted to these services if their claims have been neglected over a period of from two years to fourteen months. It is my opinion that the figure I have arrived at is much too high but even if there are only 100 men suffering by reason of the accumulation it is absolutely necessary that steps be taken to secure their rights.

(o) *Pension Tribunal*

In the Pension Tribunal it is gratifying to note that by reason of increased personnel and reduced references as a result of the 1931 amendments to which I have referred, congestion is disappearing, and in fact may be said to have disappeared. On December 31, 1931, there were 2,470 cases ready for hearing, while on August 31, 1932, there were only 1,995 outstanding. As the maximum capacity of the Tribunal is 500 cases per month, or allowing for contingencies 400 per month (the actual record over a period of seven months including the holiday months is 343) all these cases could be disposed of in about five months. That however is assuming that the Tribunals could reach every applicant in that time which unfortunately, is not the case. Canada is a large country and to route an organization such as the Tribnal with any degree of economy requires a concentration of cases at convenient places. We find for instance that as to August 31, 1932 there were large concentrations at only a few points as follows:—

Halifax	47
Montreal	139
Ottawa	105
Toronto	543
Winnipeg	135
London	46
Regina	70
Calgary	68
Vancouver	107
Total	1,260

Which means that a total of 1,260 out of 1,995 or about 60 per cent are concentrated in a few centres while the balance are distributed among the 58 other points, where the Tribunal sits. When we were examining the records in September, the congestion at Toronto was the greatest notwithstanding the fact that the Tribunal sat there continuously. Since that time we are advised that arrangements have been made for another quorum an additional staff for the Veterans' Bureau, and it is confidently expected, according to the District Pensions Advocate, that arrears will be overtaken at an early date.

These figures would seem to present the situation as far as this Branch of the administration is concerned. In actual practice, however, it is not as favourable as it looks, not that the members are not working had to keep abreast with the work but the system itself makes expeditious disposition of claims difficult. It will be noted that about 800 claims are scattered about at 57 points where the cases ready for hearing range fro mnone to 40. The expense of sending the Tribunal to a point where there are only one or two cases ready for hearing is very great and in the interests of economy an endeavour is made to arrange the itinerary of the various quorums so that five cases at least may be disposed of at each sitting. Obviously, therefore, many of these cases must wait for months for a hearing. As a test a return was asked for in respect of the cases disposed of in July showing date of receipt and date of decision. This return covers the month of July, 1932, and shows cases standing for trial before decision for from 18 months to a few days. Explanations have been given in some of these cases in which there was great delay and in some cases they were due to oversight, in others to uncontrollable circumstances. Again it is the policy of the Tribunal to give precedence to cases of severe disability so in a place like Toronto where there was a great accumulation, cases in the lower categories had to stand till the more serious cases were disposed of, with inevitable delay. In other cases applications in the lower categories were not reached within the time allotted for the sittings and had to stand over. These explanations account for the delay and indicate that the delay except in Toronto, is not so much due to congestion as to the difficulty of making quorum which is to hear the case speedily and conveniently accessible to the applicant.

Herein lies one of the fundamental defects of the Tribunal system. As at present constituted, the Tribunal consist of two members accompanied by one or more Pension Advocates; one or more Commission Counsel, a Registrar, a Medical Adviser and one or two reporters. Obviously it is an extremely expensive matter to transport this body from place to place particularly when the volume of work at a given point is not great. The principal cause of delay in this court is due to this fact.

Another cause of congestion is that in the interests of economy when a witness does not reside in the vicinity in which the applicant resides, the case is adjourned to such time as a Tribunal sits in a convenient place to hear the evidence of this witness. This too tends to delay. In the result I am satisfied that there is at present no alarming concentration of cases in this court, but that in fact there is a prospect that the court will soon be short of work except by travelling extensively dealing with individual cases.

On the other hand there can be no doubt that no matter how efficiently the machine may function it cannot deal expeditiously with all cases presented simply by reason of limitations of time and expense. In order to economize time and money, itineraries must be arranged two months in advance and to deal with cases then ready. Cases coming in after these lists are closed must inevitably wait for the next sittings, which may not be for six months or a year. The alternative is to bring these cases to the large centres where sittings are held continuously, or frequently. Here again great expense is necessarily involved and it has been found that witnesses will not readily travel great distances to give evidence.

Before passing from this phase of the case an interesting fact should be noted as indicating the beneficial effect of the 1931 legislation as to the automatic reference and also indicating that the number of meritorious cases is declining. Up to December 31, 1931, the Tribunal had given decisions in 4,199 cases in which decisions favourable to the applicant were given in 2,070 cases or 49 per cent. Between January 1, 1932, and July 31, 1932, 2,403 cases were decided in which favourable decisions were given in only 742 cases or only 31 per cent. It cannot be suggested that this indicates any tightening up on the part of the Tribunal, because prior to 1932 those decisions unfavourable to the applicant were reversed in 23 cases, in 1932 they were reversed in only two cases. It simply means to my mind that the cases now coming forward are more difficult to establish, and that by better preparation on the part of the applicant the board is able to determine correctly a larger percentage of cases than in the past.

(d) Pension Appeal Court

Here again congestion appears in an acute form. This is not intended as a reflection upon the court. I am satisfied that its members have exerted every effort to keep abreast of the work sitting long hours and without vacation to do so. Yet notwithstanding this they are swamped by the flood of appeals, both by applicant and Commission Counsel. On December 31, 1931, there were 1,230 cases standing for decision and as of August 1, 1932, there were 1,423 or an increase in accumulation of 203 in that period, although in this time the court had heard and decided 1,108 appeals. I have examined the judgments delivered by the court in one month and the care displayed in disposing of each case indicates clearly the time expended and it is quite evident to one familiar with court practice that the court cannot at present cope with the flood of appeals. At the same time it cannot be overlooked that the situation is causing the greatest hardship to those affected and is the primary cause of prevailing dissatisfaction.

To indicate how this is operating it is necessary to refer to the returns made of cases heard in the month of June, 1932, 138 Commission Counsel appeals were heard, and 92 applicant appeals. Of these it is found that the average time elapsing between the date of notice of appeal and date of hearing was 8·8 months for Commission Counsel, and in the case of applicant appeals, 3·93 months. The greatest amount of time elapsing in case of applicant appeals was from May 19, 1931, to July 12, 1932, and the least from April 27, 1932, to July 6, 1932. In the great majority of cases the time elapsing is over ten months. It is readily apparent that when a man has received a favourable decision from the trial court and is then compelled to wait ten months for final decision on a question as vital as pension, there must necessarily be resentment and dissatisfaction.

Apart from the inability of the court to deal more promptly with the cases the principal reason advanced for delay is the difficulty of securing transcripts of evidence. From the evidence before us it is evident that the reportorial staff of the Tribunal finds difficulty in keeping up with the daily work and at the same time turning out the number of transcripts required. For instance, we learned that in June and July, 131 appeals had been entered but as of the 24th of September only 32 transcripts had been received. In case of an appeal entered on June 2, transcript was not delivered after a lapse of nearly four months. On the other hand, we have cases of transcripts delivered within five days. It is agreed that the reporting staff is overworked and this is a contributing factor to the delay, but does not explain, and I have been unable to secure any explanation as to why it takes twice as long to present a Commission Counsel appeal as it does to present the applicant's case. These too depend on transcripts. However when all is said it is quite apparent that under existing

conditions the court is quite unable to handle the cases presented and that if the work could be brought up to date there would still be delay with existing staff in securing transcripts, except that as the court is overworked, an attempt is made to bring in urgent cases first. It may then happen that a case with slight disability, and which is ready, is passed over for a considerable period of time. Also, in the case of applicant appeals it is found in practice that the reasons for decision of the Tribunal are so conclusive in many cases that little argument is available to the Pension Advocate, so they are utilized to fill in available time after disposal of the Commission Counsel cases, in which argument is frequently lengthy. This is not to suggest that the applicant's appeals are lightly disposed of, but that it has been found in the great majority of cases that if the Tribunal has given an unfavourable decision, there is really very little which the Pension Advocate can urge in support of the claim.

As of the 30th of September, there were 941 Commission Counsel Appeals before the Court, of which 600 were ready for hearing. Sitting continuously, the Court could not dispose of these alone in less than six months, by which time a fresh lot would be ready. We are accustomed to speak lightly of the Law's delays, and are perhaps more or less reconciled to them in ordinary court matters, but here we have 941 men whose cases have been favourably reported upon by the trial court, even on the present percentage about 325 of them will ultimately become pensioners. With them we are dealing not with ordinary civil rights, we are dealing with human health and happiness, the health and happiness of a class preferred and justly preferred by their Country, and it is inhuman that they should be kept waiting month after month for the decision which so vitally affects them. In saying this I am making no criticism of the Court or of the Department, it is the system which is operating harshly, and which must be humanized.

VI. CONCLUSIONS

From the foregoing I reach the following conclusions which I consider established by the evidence:—

(a) Board of Pension Commissioners

(1) That as a result of the 1930 and 1931 legislation there is before the Board an accumulation of applications which I believe are in their present state of proof, unlikely to be conceded, that is, the man may have a real claim, but the proof adduced is not sufficient to warrant a decision by the Board.

(2) That nevertheless there are among these cases some which possess merit and yet which will be delayed in securing that to which the applicant is entitled unless a decision is given.

(3) That with the removal of this accumulation the Board is able to deal with the current applications.

(b) Tribunals

(1) That in point of work available there is no actual congestion except in the City of Toronto, and there we are advised that all cases ready are now listed for hearing except 56 and the District Pension Advocate expects the present accumulation will be disposed of by March 31st, 1933.

(2) That nevertheless the very nature of the procedure makes it difficult, if not impossible, to secure an early decision in cases referred for hearing.

(c) Pension Appeal Court

(1) That the Pension Appeal Court is congested beyond hope of overtaking its work within any reasonable period of time.

(2) That even if measures were devised to overtake the present accumulation there would still be delay by reason of inability to secure speedily with the present staff, transcripts of evidence for the purpose of the appeals, nor could the present staff of the Chief Pension Advocate and Chief Commission Counsel handle the additional work.

VII. CAUSES OF CONGESTION

Before proceeding to discuss remedies it will be necessary to determine the causes of congestion as it is necessary to clearly understand all the contributing causes before deciding on the cure.

(a) Pension Board

(1) Primary Cause.—The Board suggests that the primary cause of congestion is the accumulation of cases as a result of the 1931 Legislation and incidentally of the 1930 Legislation. This is to a considerable degree correct. It was realized by all that the 1930 Legislation, restoring as it did, thousands of commuted pensions, re-opening cases, disposed of by the Federal Appeal Board, extending the rights of widows, and introducing the benefit of the doubt, would throw a great burden on the Board of Pension Commissioners and for some time there would inevitably be great congestion. No one realized however, that after two years, that condition would continue to exist. It appears however that it does exist, and so long as this accumulation is permitted to remain undisposed of, even although as I have already indicated, the applications involved do not represent any large number of potential pensioners, the situation cannot be considered satisfactory. The margin of the Board working at full capacity, is only 28 per day in excess of current business, so manifestly this condition cannot be readily corrected by existing machinery.

(2) Secondary Cause.—The secondary cause suggested by the Board is the existing economic conditions. It is suggested that the men out of employment are seeking to establish entitlement, however small the disability, to qualify for Pension Relief, or in case of men whose service was only in England or Canada, for War Veterans' Allowance. It is of course, impossible to establish this as a fact (although letters from various district Officers are quoted in support of this opinion). It is my opinion that this may to some extent increase the work of the Board, but not to an embarrassing extent. In any event it is a situation which cannot be cured and must be taken care of.

(3) Fundamental Causes.—In my opinion, after carefully considering all the evidence, the fundamental cause of congestion is lack of preparation. Any person who considers he is entitled to pension may approach the Board and although he may produce no evidence but a vague medical certificate, that application has to go through the process of presentation and consideration even though it will probably not be granted.

And why will it probably not be granted? Because of the very liberality of our pension legislation. We concede entitlement to a man not only for injury received at the hands of the enemy, but our legislation goes much further and embraces the "insurance principle." That is, pensions are awarded for disability from injury or disease resulting in disability or death which is attributable to or was *incurred on service.* The words "incurred on service" mean that the member of the forces was insured in respect of disability incurred while on service, whether it was in consequence of his military service or not. That is, injuries sustained far from the front, are pensionable. So are conditions to which we are all subject, and which ordinarily have no relation to service as such, for instance, appendicitis, if any disability remains. Now it has been

noted that the vast majority of claims now being presented are in respect of diseases—medical claims as they are called to distinguish them from injuries resulting from enemy action. The majority of these are in respect of tuberculosis, bronchitis, asthmas, rheumatism and heart and stomach conditions, to all of which service men were particularly subject by reason of the conditions under which they lived. But it must be remembered that Canada has not yet conceded the right to pension in respect of these claims unless they were incurred on or attributable to, service, although the benefit of the doubt clause was inserted to assist in establishing these claims. If a condition appears on a man's medical history sheet, related to that from which he is now suffering, the matter is comparatively simple, but if no contributing cause is disclosed on that sheet related to his present condition, and if he was discharged fit, it does not inevitably follow that a man of fifty, who first discovered a heart condition in 1930 incurred that condition on service. The nature of his life and employment since discharge, and his age, may be the contributing factor. Hence under the present law it is necessary in such disease cases, and they constitute the major portion of the applications now pending, that there should be some evidence of service origin and continuity to connect the present condition with the service period. Naturally, after all these years, that takes some time and specialist knowledge of the necessary proof. Hence, when a man files an application without any evidence of continuity, the whole machinery of the Board must be set in action. His service records must be searched, precis prepared and medical opinions secured. All this takes time and when the case reaches the Board it is found that there is no evidence of continuity, and the case joins the other 5,000 odd I have referred to. By examination of the files we have verified this fact. Consequently it is apparent that the work of the Board has been congested during the last two years by some 16,000 applications which should never have come before the Board because the evidence necessary was lacking or inconclusive. Much time was accordingly lost, money expended and expeditious disposal of deserving and meritorious claims interfered with and delayed. As time goes on, this situation must, unless corrected, become more acute.

(2) Another contributing cause is the practice of the Board in requiring its medical examiners, in carrying out routine examinations of pensioners, to note new conditions which may appear. This is a very beneficial practice and one of which I highly approve. But this condition even if noted becomes an application for pension and has to go through the routine of such even although the man has no intention of applying for pension in respect of the condition. I feel that the practice should be continued but the man should be required to definitely apply, without however waiving any rights to apply at a later date if he so desires.

(3) In the evidence adduced it is stated that 90 per cent of cases now coming before the Board are repeaters, i.e., cases which have already been considered one or more times. Each of these cases must be treated as a new application. The Chairman accepts this statement as proved but I would point out that Colonel Thompson simply offered it as his opinion, and while I would not suggest for a moment that it is not correct; yet before it is accepted as a basis for recommendation, it should be analyzed and verified, particularly as Dr. Kee seems to have a somewhat different opinion. In any event, if it is a fact, it simply indicates the necessity for more adequate preparation and some system which would prevent a repetition of presentation of cases which cannot be established but which by their very presentation make it impossible for the Board to deal expeditiously and adequately with matters coming properly before it.

(*b*) *Pension Tribunal.*—As already indicated, the congestion in this Department is not serious except in Toronto where the situation is being relieved. As of August 31, 2,025 cases remained to be heard. If the Tribunal could reach all these cases and work at its maximum capacity, all these cases could be disposed of in five months. Working at its proved capacity, namely 345 cases per month, this accumulation will be disposed of, provided of course the cases could be reached, in five months, or before any action can be secured as a result of the report of this Committee. At that time, on the basis of average references in the past seven months, 1,657 new cases will be ready, and on the same basis the Tribunal would, on December 31, 1933, have only 630 cases for hearing. Before, therefore, any action can be taken on this report, this Tribunal will be well abreast of its work and the situation therefore would not at first sight call for any drastic change. But as already pointed out, Canada is a large country and these cases are scattered all over it in small numbers and to reach every one of these applicants in the time stated is going to be a very expensive matter involving the transportation of the Tribunal personnel long distances to isolated points to deal with one or two cases. The present system can never be operated economically unless there are a large number of cases available and as the number decreases so the costs must inevitably increase. And while the question of expense must never be allowed to interfere with the proper administration of this Act, it is for this Committee to face the situation now existing and determine whether means cannot be devised whereby the existing machinery cannot be so adjusted as to give speedy relief without adding to the burdens of the country. In other words, can means be devised to give the applicant in isolated localities the benefits of a public hearing without what might be considered prohibitive cost.

(c) Causes of Delay

The causes of delay at present may be summarized as follows:—

(*a*) Previous insufficiency of staff in the Veteran's Bureau at Toronto making it impossible to provide for sittings of the Tribunal to cope with the situation, which situation has now been corrected.

(*b*) Delay resulting from the practice of adjourning hearings for evidence of witnesses at distant points. I quite realize that it is impossible to take a witness from Halifax to Vancouver and that some arrangement to obviate this should be made. The present practice of hearing the applicant and then adjourning the hearing from time to time to take the evidence of witnesses all over Canada is in my opinion unsound. The advocate should before proceeding state that these witnesses would be required and some arrangements made for the taking of evidence before the case opens.

(*c*) Insufficient provision and lack of proper medical examination before the case is opened.

This is a very serious matter as it is quite evident from the material before us that in many cases the hearing is delayed because the advocate has been unable to secure proper diagnosis or medical examination of the applicant before the hearing.

(*d*) Too much centralization of administration in Ottawa.

(d) Pension Appeal Court

As I have already indicated, there is congestion in this court and while the other branches of the administration are showing improvement even though slight, this branch, notwithstanding the greatest possible effort is going steadily behind. As of August 1, 1932, there were 1,456 appeals listed for hearing. In the previous seven months the court had disposed of 1,108 appeals or an average of 155 per month. It will therefore require nine months to dispose of this

present accumulation and by that time on the basis of average receipts during the first seven months of the year, there will be a fresh accumulation of 1,685. I have already pointed out that in the majority of cases of commission counsel appeals, it takes nearly ten months to secure a decision. Obviously as the court goes behind, the time required will be longer. While delay in all branches is unfortunate, here it may be described as a calamity for in nearly 4 per cent of the cases we are dealing with men who at least have reasonable hope of success. The long delay cannot be tolerated and means must be found to correct the difficulty.

When we come to determine causes of congestion and delay, the task is more difficult. Rather it is easy to determine the cause which is the number of appeals but it is difficult to determine the reason for the number of appeals. These fall into five classes:—

(*a*) *Applicant.*—It is of course easy to understand the cause of the numerous appeals in these cases. The applicant has fought his way through the lower courts and has received an adverse verdict from both. He has unlimited time to appeal, it costs nothing to appeal, so as a last hope he enters his appeal. That only a small percentage of these appeals are allowed is no reason for the discontinuance of the right of appeal. When I refer to the small percentage of success, this is not intended as a suggestion that the court is unduly severe, but simply, as expressed by the chief pensions advocate, and confirmed by my own examination of the court's findings that the reasons of the Tribunal in most cases are so conclusive that there is little that can be urged in support of the appeal. Like the Pension Board, the time is being taken up with hearing and reviewing cases, hopeless from the outset. Yet it is difficult to see how we can restrict the right if only two in a hundred succeed. These two in every hundred are entitled to justice, hence the door must be left open to prevent injustice. This is a cause of congestion which is inevitable in any system where we hope to reach some finality of decision.

(*b*) *Commission Counsel Appeals.*—The introduction of commission counsel appeal was a new feature of the 1930 legislation. Under the previous legislation the decision of the Federal Appeal Board was final. But the findings of the Federal Appeal Board had to be made solely on the evidence adduced before the Board of Pension Commissioners with the additional feature that they saw the man and heard his advocate. They were in effect a Board of Review. By the new procedure there were no such limitations imposed but the case might be decided upon entirely new evidence. Under these circumstances it was urged and agreed that the decision should not be final but should be subject to review by the Pension Appeal Court. If we accept as even approximately correct the findings of the Appeal Court, this provision was justified, for since the inception of the court down to August 31, the Tribunal had given 2,377 decisions favourable to the applicant and of that number 2,145 have been definitely appealed or about 71 per cent; of these the court has heard 1,180 cases and in these the decision of the Tribunal has been sustained in 369 cases, or in 31·5 per cent of the cases. In 572 cases or 53 per cent the decision was definitely reversed and in 193, or 17·0 per cent of the cases the application has been referred back for rehearing. In other words only 31·5 per cent of the decisions of the Tribunal which are appealed are sustained in the first instance or including the decisions of the Tribunal not appealed only 41 per cent are sustained in the first instance. It is a remarkable fact that up to August 31, 1932, the Tribunal gave 3,922 unfavourable decisions of which 1,797 were appealed and as pointed out in the appeals so far heard, only ·02 per cent have been successful. It would appear therefore that the Tribunal is nearly 100 per cent perfect in unfavourable decisions and 60 per cent wrong in favourable decisions. The commission counsel points, and justly so, to this record of

successful decisions as justification for the maintenance of the right of appeal, and as justification for the number of appeals. Yet it can safely be said that this question of appeals has done more to create dissatisfaction and bring the whole system into disrepute than any one other thing, and unless this committee, or the Government, as a result of our findings can find some means of doing justice to the man and the State and yet eliminate this feature we may as well confess that our work has been a failure.

It can be asserted with confidence that when the legislation was first introduced, no one contemplated such a situation. It was recognized that the Tribunals were being given new and enlarged jurisdiction, it was recognized that these bodies would work separately and would have little opportunity of actual contact and consequently there would inevitably be lack of uniformity in decision and interpretation of the law. Consequently, some body which would definitely interpret the law and establish some uniformity of decision was necessary in fairness to the applicant and to the State. That body is the Pension Appeal Court. But for some reason very difficult to ascertain, that very necessary feature is proving the greatest obstacle to the successful operation of the system. Again this is not a criticism of the Appeal Court, it is simply a statement of fact, made abundantly clear by the evidence before us. How, without interfering with the judicial discretion of the Tribunal on the one hand and the Appeal Court on the other, can we eliminate this unfortunate situation, secure greater uniformity in decision and reduce the number of Crown appeals, should be our principal concern.

To secure a remedy we must first find the cause and this is by no means easy. Anyone familiar with the working of the Tribunals knows how conscientiously and sympathetically they approach their duties. The reasons given by many of them for their decisions are models and indicate how painstakingly they weigh every particle of evidence in an endeavour to do justice. But that is not to suggest that the Appeal Court does not equally approach each case in the same spirit. I have in my own experience observed the Court struggle for an hour with a difficult point which appeared to stand between a badly disabled man and his pension to see if some way round could not be evolved. To further enlighten myself on the subject, I have requisitioned all judgments delivered by the Court in the month of June, 1932. Not a selection of judgments but all judgments delivered in the daily routine. I have read them very carefully, over one hundred separate judgments and have been amazed that members of a Court so overwhelmed with work have been able to give such care, such meticulous care, to the consideration of cases before them. There is not a sign of hasty decision nor snap judgments, nor are there any signs of seeking to destroy the claim, rather that of seeking if possible to sustain the verdict. The problem is a very difficult one. Many reasons have been suggested. It might be well to examine some of these.

(1) *Reversal of Finding of Fact.*

The suggestion has been made that the Trial body having seen the man and heard his witnesses is in the best position to judge of the reliability of his claim. That proposition is absolutely correct and has been expressly affirmed time and again by the Court of Appeal. To give a few examples:—

In the case of Westlake, the President said:—

"Had I tried the case myself I am rather inclined to think I would have dismissed it on the ground of lack of sufficient evidence but on appeal, I am not prepared to say that the Tribunal was not justified in the decision which they arrived at and therefore would dismiss the appeal."

In the case of Smith, decided 14-6-32, Sherwood Member, said:—

"There being some evidence on which the decision could be founded, the Court is of the opinion that the appeal should be dismissed."

In another case the President said:—

"As Members of the Tribunal saw and heard witnesses and whilst there are some peculiarities in the case, nevertheless they credited the testimony. I can find no principle upon which to say they are entirely in error.

"I might add however that had I tried the case I would have looked with grave suspicion on some of the evidence and in all likelihood would have dismissed the application, but I place the responsibility where it properly belongs, that is on the shoulders of the Tribunal, they having seen fit to credit the evidence as a whole."

And again on 7-6-32, the President said:—

"And although the case is an extreme one I am not disposed to say that the decision was unwarranted and therefore conclude that the Appeal must be dismissed."

These few excerpts from actual judgments indicate that the Court is thoroughly appreciative of the fundamental principle that the Appeal Court does not lightly over-rule the findings of fact of the Trial Court. Now as nine out of ten of these cases turn upon question of fact, how does it come that there are so many reversals. It is, so far, as my examination goes, due to the application of another principle that the finding of facts must be in accordance with the evidence. To take an extreme case, the Tribunal found "that upon the records" a certain condition existed on service. On appeal no such record could be found. The members of the Tribunal were asked to indicate such records but failed to do so. As there was no evidence before the Court to support the finding obviously it was reversed. Again and again throughout these judgments I find the attitude of the Court to be even assuming the facts to be as found, yet such facts do not establish a prima facie presumption that the disability was incurred on service, merely the supposition that it might, but also it might have regard to age and subsequent employment just as reasonably or more reasonably, have occurred since discharge. I have already in considering the principle of insurance as contained in our Act, pointed out the necessity of some evidence to connect the present condition with service. It will be found in the large majority of appeals that they turn on this question, which leads us to the next suggestion, namely:—

(2) *That the Court does not apply Section 73 of the Benefit of the Doubt Clause in favour of the applicant.*

I must preface my observations on this subject by repeating the well known statement that the Court does not make the Law, it interprets it. If the law as it stands and as construed by the Court does not fully meet the intent of Parliament, it is for Parliament to amend it, not for the Court to seek to find the intent of Parliament by reference to debates, etc., and so interpret the Act.

The benefit of the doubt clause was inserted in 1930 because Parliament recognized the difficulty at this late date of establishing that continuity necessary to connect present conditions with service conditions. It was realized that a man who had long service in the lines, the forward area in a theatre of war would be more subject to such conditions as tuberculosis, bronchitis, rheumatism, and affections of the heart or nerves, than an ordinary man. Consequently it was enacted that:—

"The applicant shall be entitled to the benefit of the doubt, which shall mean that it shall not be necessary for him to adduce conclusive proof of his right to the pension applied for, but the body adjudicating on the claim shall be entitled to draw, and shall draw, from all the circumstances of the case, the evidence adduced and medical opinions, all reasonable inference in favour of the applicant."

This section has been interpreted by the Court on several occasions. At the first sittings of the Court the President said:—

"In my opinion proof or evidence of the fact must be of the same general nature as is required in a Court of Law, as for instance in a damage action for injuries or death. The method of proof might justifiably be more elastic but the proof must be positive and not left to mere conjecture, suspicion or surmise. It may happen that on a con-

sideration of the whole case the evidence may preponderate as against the applicant but whilst he would in that case probably fail in a Court of Law, it was intended by Parliament (see Sec. 73) that nothwithstanding the weight of evidence against him the applicant should succeed but always provided a prima facie case at least is established or made in the first place on the balance of the two which a real and substantial, but not a fantastic doubt in his favour is left in the minds of the Tribunal or Court."

In the Heavyside case, Sherwood, member said:—

"It is to be observed that the Legislation does not state that "*all inferences*" are to be drawn in favour of the applicant but only "*All reasonable inferences.*" Furthermore, the opening words of the Section cannot be disassociated from the latter portion. The Section says that on any application for pension the applicant shall be entitled to the benefit of the doubt which shall mean that it shall not be necessary for him to adduce conclusive proof of his right to the pension applied for but that the inference above mentioned shall be drawn. The statement that it shall not be necessary for him to adduce *conclusive* proof seems to have a controlling influence upon the whole section. One would judge that what was in the minds of the Legislators was that heretofore conclusive proof had been expected of an applicant for pension. (*Note*—this is not correct as I have shown but Col. Sherwood is absolutely correct in his method of interpretation and proceeding upon established legal principles. A court must construe a Statute as it finds it without extraneous assistance unless it be that inferences can be drawn from the Law as it formerly stood). Then Legislature definitely stated that conclusive proof was no longer required but it must be assumed to have been intended that some proof was required. The writer's conception is that at least a reasonable prima facie cause must be established by evidence of some convincing nature, though not necessarily so strictly regarded as in an ordinary Court of Law. If as a result then there is a reasonable doubt in the minds of the body adjudicating, this doubt can be resolved in favour of the applicant."

These are the constructions placed upon the Section by the Court and I imagine they will stand legal opinion. That they go as far as Parliament intended I doubt because I was distinctly under the opinion that the character of the man's service should be a factor. It may therefore be necessary to consider an amendment to meet this situation.

The Court, I find, does apply the principle of the benefit of the doubt within the above limitations, as for instance, the case of Gammage decided on 16-6-32, when the President said:—

"Whilst it is impossible to conclusively demonstrate a case of this nature, nevertheless it is also impossible on the facts of this case to eliminate a reasonable doubt of its validity, to which doubt the applicant under Sec. 73 is legally entitled."

And again in the Wooley case he said:—

"Whilst I have said above the case seems extraordinary nevertheless in view of the medical opinions and other facts and circumstances of the case, I think it is at least difficult to avoid a reasonable doubt, and that being so, in my opinion the appeal should be dismissed."

Now it has not been possible for me to examine all the judgments of the Court and it may quite well be that there are cases in which a reasonable doubt exists as to whether the Court gave the full measure of benefit of the Act, (I have a case in mind in which I do not think they did so), yet after all we have to depend on human judgment which is by no means a certain quality and therefore we cannot all agree. I think I have stated sufficient to show that the Court is duly mindful of the Provisions of the Act and does invoke the assistance of Sec. 73 in giving entitlement.

(3) *Lack of Information as to Decision*

It is also suggested that the members of the Tribunal are not sufficiently advised of Court decisions. I find this to be established. It is true that members receive decisions respecting their own cases and also cases which the Chairman considers of general interest, such as cases dealing with jurisdiction. I do not consider this sufficient. When the present system was inaugurated it was claimed as one of its benefits that in one year we would have a pension jurisprudence which would seure uniformity of decisions and interpretations. We have that

but it is not available to all members. It is objected that most of the cases turn on sufficiency of evidence and do not establish principles. But in my opinion it would be invaluable to the members of the Tribunal to know how the Court applies the principle of proof in each case. And having this in mind I cannot understand how these reversals persist unless it is that members of the Tribunal are not sufficiently informed. The Appeal Court is the final Court, its decisions are binding on the Tribunal and when it has clearly stated the principles of evidence applicable it is, in my opinion, the duty of the Tribunal to conform. But if the Tribunals are not fully informed they cannot conform. Hence the present condition.

(4) *Medical Opinion*

It is suggested that the failure of the Court, to properly apply medical opinion is another contributing cause, and suggested that if the Courts and the Tribunals consisted in part at least, of qualified medical men, conditions would be different. I cannot agree with this. A perusal of the cases indicates that doctors do disagree. After all, a doctor can only give an opinion on facts. An expression of opinion that a man 48 years of age who is diagnosed as suffering from tuberculosis in 1930 incurred it on service must be supported by some medical facts upon which to base that opinion. Under such circumstances it is my opinion that a lay tribunal is best qualified to judge the value of the medical evidence by reference to the evidence on which it is based. After all, legal tribunals are frequently called upon to decide medical questions and I have never heard it suggested that they are not qualified to do so. Medical men have certain definite opinions and medical men do not agree that certain results may follow from certain facts. Dr. Ross Millar in his statement to us says Medicine is more an art than a science. Hence if you have a medical adjudicator who holds one view it is unlikely he will follow another, while the impartial layman without any medical bias will listen to various opinions and give effect to that which seems to be the most logical or to have the support of the greatest body of medical opinion.

(5) *That the Crown Appeals Cases Wholesale and Without Due Consideration*

This matter has been fully investigated and it appears that at one time the allegation might have been considered justifiable. When the scheme first came into operation it was the practice, owing to the limitation of time, to instruct Commission Counsel to appeal practically in every case in order that time might be given to review the decision. That practice has now been discontinued and we are assured both by the Chairman of the Board of Pension Commissioners and by the Chief Commission Counsel, that no case is ever appealed except by direct instructions of the Board after review of the evidence, if available, and in any event the reasons of the Tribunal. This, of course, is what was intended by the Act and while I believe it was a mistake to put responsibility for appeal upon the Board, the body which gives the first decision, yet the percentage of success achieved justifies the action of the Board in appealing. It should be added that in any case in which the Board gives instructions to appeal without transcript of evidence being available, the case is again reviewed when the transcript becomes available and in this way a number of appeals have been withdrawn—the Board conceding entitlement on perusal of the transcript.

I do believe, however, that by close co-operation the number of appeals could be reduced without sacrificing the interests of the State. We have ample evidence of the close co-operation existing between the Board of Pension Commissioners and the Veterans' Bureau, with resulting success. If such co-operation exists between the Board and the Tribunal it is not in evidence, on the contrary

such evidence as we have indicates lack of harmony and distrust. This is indicated by evidence of a controversy regarding difficulty in securing transcripts. It seems incredible to an outsider that so much difficulty should have arisen about so simple a matter. It is evident throughout this correspondence that there was an under-current of hostility to the Tribunals, as is evidenced by the final letter of the 13th of February, 1932, set out on page 106 of the evidence of September 26, 1932. It is very evident from this letter that it was desired to curb the activities of the Tribunal and to control its discretion to a considerable extent. The suggestion that the Tribunals were merely to sit and hear that which was adduced and had no right whatever to direct the conduct of the case is to my mind a most extraordinary one. The suggestion that the Tribunals should stand by and see the interests of either the applicant or the Crown suffer by failure of either the Advocate or Counsel to elicit relevant evidence is one which no self-respecting Court would tolerate. If the Tribunals adopted such attitude, I would be unsparing in my condemnation. The whole controversy is to my mind strongly indicative of lack of co-operation which must inevitably react unfavourably in the matter of appealing. The Tribunals may, or may not be satisfactory to other branches, but that is no concern of theirs. They are appointed by the Government to do certain things and if they are incompetent or inefficient the responsibility lies with the Government which appointed them. The request was justified that relevant objections to evidence or procedure should be noted and that point should have been conceded without question. But when officers of the Crown go farther and openly indicate dissatisfaction with the manner in which the Tribunals conduct the hearing, they are going much further than duty required. The incident is immaterial except in so far as it indicates a state of mind which I believe militates against the smooth-running of the machinery.

VIII. GENERAL CONCLUSIONS

(a) Board of Pension Commissioners

The congestion in the Board of Pension Commissioners is due to the following causes:—

(1) The remission of some 15,000 claims by the 1931 legislation.
(2) Insufficient personnel to overtake this accumulation and keep up with current work.
(3) Insufficient preparation of cases submitted which results in wasted time and effort dealing with cases which have no chance of success due to lack of evidence.

(b) Tribunals

That there is no real congestion in this department except in the City of Toronto, where the situation is now being dealt with by the provision of additional personnel but under the existing system there must always be delay in hearing cases on account of the difficulty of arranging the itineraries of the Tribunals to reach all points effected within a reasonable period of time.

(c) Pension Appeal Court

That there is undoubted congestion and delay in this court through no fault of the court but due solely to,—

(1) The large number of applicant appeals, a large number of which have no chance of success as evidenced by the figures submitted.
(2) The large number of appeals by Commission Counsel which is apparently due to the inability of the tribunals and the court to find common ground as a basis of judgment.

IX. OBSERVATIONS ON THE EVIDENCE ADDUCED AND REMEDIES SUGGESTED

In the time and space available, it is not practicable for me to make a thorough analysis of the very exhaustive and valuable evidence which has been given to us by the witnesses called. Without exception, they stressed the fundamental need for complete and adequate preparation before a claim is even presented to the board, and particularly the need of competent medical examination and diagnosis. Representatives of all organizations join in urging this suggestion with argument and reasons too powerful to be resisted. All are of the opinion that the right of public hearing by the man must be preserved and many suggestions are offered as to how this may be done, and all complain of the delay occasioned in hearing applications for the reasons which I have indicated, and the disposal of appeals. Naturally there are many remedies suggested of a varying degree. In not adopting these remedies in their entirety the committee does not necessarily set up its judgment as against those witnesses all of whom appear to have given careful and intelligent study to the problem. We have endeavoured to meet the views expressed to the best of our ability to secure relief from the conditions imposed; at the same time seeking not to secure such radical alterations as may ultimately produce new complications. This applies particularly to a recommendation submitted by the Christie Street Hospital Branch of the Canadian Legion, who have submitted a brief which shows every evidence of careful thought directed by long experience. I feel, however, that at this late date when we should be approaching the peak of pension applications, it would be a dangerous thing to recommend or to adopt a scheme which involves an absolute reversal of the work of fourteen years. It has been stated that the present machinery cannot be said to have worked satisfactorily, and while the suggestion submitted has many attractive features, yet the change is so radical that I would not be warranted in recommending it at this late date. In this report, I simply endeavour to make a thorough review of conditions as they are; to analyze the cases and to suggest principles upon which changes may be made. The evidence given by the witnesses, following as it does, careful study, should be of great assitsance when the Government comes to study the matter at issue and decide on the policy to be adopted.

X. REMEDIES

In approaching the matter of remedies, one finds it extremely difficult to make specific recommendations. The major subject of complaint is the delay in hearing appeals and the inability of the Chief Pensions Advocate to uphold the decision of the Tribunal in the Pension Appeal Court. I have already pointed out, I think, clearly, that I personally can find no fault with the judgments of the Pension Appeal Court and that the number of successful appeals is due to a number of causes and probably to some which we have not detected. Obviously, under these circumstances it is not possible for us to ask that the Crown right of appeal be abrogated as suggested. Nevertheless, it is extremely desirable that this annoying situation should be remedied. It is my own personal belief that this could be done by establishing one court of first instance, the court passing on obvious claims at Ottawa and referring doubtful claims for hearing by a Field Commissioner who would report his findings to a full quorum of the Court at Ottawa for decision, subject to an appeal by the applicant to the Court of Appeal. With this protection, the Crown might quite properly abandon the right of appeal except in cases of fraud or obvious error. However, such system would place us back in the same situation which obtained prior to the institution of the Federal Appeal Board, and would expose the administrative and adjudicating bodies to the criticism that the man's fate was

decided by bodies sitting in camera in Ottawa without due consideration to the human aspect. This objection would inevitably be raised and would be a very serious matter. I have, therefore, reluctantly come to the conclusion that the system of adjudication along the lines at present in force will have to be maintained but that arrangements will have to be made for closer liaison between the different bodies and, by provision of such staff as is necessary to carry on the work so expeditiously as to remove the cause of complaint. Sufficient stenographic assistance will have to be provided to secure prompt submission of transcripts or other means devised to eliminate this cause of delay. The Pension Appeal Court will have to be temporarily enlarged to provide for two quorums, and the necessary staff will have to be provided to adequately prepare and present these cases. It is my firm belief, however, that by co-operation between the various bodies in the fullest degree, much of this work could be eliminated.

In suggesting remedies, I do so with considerable diffidence for the reason that it seems to me that it is always difficult for one not connected with the administration of the Act to make suggestions in regard to the administration in the absence of complete knowledge of how this work is to be carried out. In the past when veteran organizations have made complaints and suggested remedies, and when such proposals have been accepted, they have been held responsible if the remedies suggested failed to cure the defects complained of, or if, having removed some cause of complaint, they gave rise to others. That is the situation which followed the passing of the 1930 legislation. At that time the veteran bodies complained of certain conditions. Before any suggestions were submitted, the Parliamentary Committee investigating the matter proposed new procedure and the suggestions were approved. This procedure undoubtedly did produce very marked improvements in certain ways, but, as I have already indicated, created new and difficult situations. My submission, therefore, is that inasmuch as the Parliament of Canada has made provision for pensions to disabled soldiers and their dependents, and has conceded the right of applicants for such pensions to be heard, and have their cases tried, by an adjudicating body, to which they have approach it is for the Government of Canada, which is responsible for the administration of the Act, to see to it that such administration is sufficient for the purpose. It is for the officers who have expert knowledge of administration, to devise ways and means to ensure that an applicant for pension shall have his claim sympathetically heard and disposed of with the minimum of delay, and in such a manner as to secure sympathetic consideration, with due regard to the interests of the State. One not intimately acquainted with the operation of the different Branches of the Pensions Service may feel that certain changes would effect improvements but, without a complete knowledge of the whole situation, would fail to appreciate that one alteration might have unfortunate ramifications in other directions. Consequently I have the feeling that when we have demonstrated, as I feel we have demonstrated, that there is justifiable cause for complaint in the operation of the present organization, it is for those responsible for administration to see to it that necessary adjustments are made to ensure adequate provision for disposition of the claims in accordance with the spirit of the Act. To place upon the veteran bodies the responsibility of suggesting changes is, to my mind, unfair. They have nothing to do with the administration of the Act or the appointment of Departmental personnel to carry out that administration, and it is obvious that no matter how perfect the scheme may be on paper; yet it requires, for perfect working, sympathetic co-operation of all who are entrusted with the duty of interpreting the law by administrative work. The most perfect scheme may be ruined by inefficient or unfriendly operators. With this

qualification I have subscribed to the following general principles which have been submitted to the whole Committee as a basis of agreement:—

1. That provision should be made for temporary increase in the number of quorums of the Pension Appeal Court, in order to deal with arrears of appeals before that Court.
2. That one court of first instance be formed.
3. That the right of an applicant to appear in person before the court of first instance be preserved.
4. That the procedure of the personal hearing be simplified as far as consistent with adequate reception and recording of evidence.
5. That the right of the applicant to appeal against adverse decision of the court of first instance be preserved, but the period for filing such appeal be limited to 120 days from his reception of such decision, with the proviso that on application the Pension Appeal Court may, in its discretion give leave for the appeal to be heard or the application to be renewed. (Limitation of time not concurred in—only a detail).
6. That the appearance of Crown Counsel at the public hearing shall not be mandatory.
7. That with certain obvious exceptions, application for first entitlement shall be passed to the Veterans' Bureau to ensure adequate preparation.
8. That authority be given to the court of first instance (and the Veterans' Bureau) to authorize adequate medical examination of the applicant.
9. That provision be made for an appeal by the Crown, and that no favourable decision be announced to the applicant until decision has been reached as to whether appeal shall be entered.
10. That the initiation and prosecution of appeals on behalf of the Crown shall not be a responsibility of the court of first instance.

I do believe that if such principles are put into effect, an improvement may be expected, but I wish to emphasize that the human factor is the important element and that there should be complete and entire co-operation among the personnel employed for the purpose of administration. This, to my mind, is the one feature that should never be overlooked. With this explanation and qualification, I now wish to record my observations touching the general principles which have been presented to the Committee:—

(A) Veterans' Bureau

I commence with this Branch because, as I have already indicated, preparation, or lack of preparation, is the fundamental cause of all congestion. It has been demonstrated beyond doubt that the Board of Pension Commissioners is seriously hampered in its work by having to consider cases, not prepared or insufficiently prepared. The same thing applies to a lesser extent in the Tribunal and more particularly before the Court of Appeal. Up to August 31, 1932, the Court had given decisions on 2,445 cases, and of these 214 or more than 10 per cent had been referred back to the Tribunal for rehearing generally on the ground that the case had not been properly presented. This involves of course great delay, waste of effort, to say nothing of expense. I feel, therefore, that nothing can be accomplished unless we make provision for extending and strengthening the Veterans' Bureau, and while some expense may be involved here I am quite satisfied that in a very short time the savings effected in other departments will more than offset the expenditure involved.

In this connection I may say that I do not think it advisable or desirable that one not connected with the administration should make distinct recommendations as to the relationship of this Bureau to the adjudicating bodies, but it seems to me that a tremendous amount of expensive time would be saved if

some arrangement were made whereby applications for entitlement with respect to pension which are unsupported by any relevant evidence should be referred to the Bureau and prepared before submission to the Board. Every time an application comes before the Board, it has to pass through the routine of preparation for the purpose of presentation but if it does not carry with it the initial evidence necessary to secure entitlement it must inevitably be rejected. It is in evidence that many claims come back time after time without any additional relevant evidence and much time of the Board and of its staff is necessarily wasted in dealing with cases in which the Board cannot grant entitlement in the then present state of preparation of such claims. This should not require any legislative sanction but a working arrangement whereby the Board and the Bureau would co-operate should be easy of arrangement.

It is submitted further that the idea of having all applicants approach the Board through the Bureau, and which cannot easily be procured by compulsion, might be procured without compulsion if the Bureau were separated from the Department. In the evidence before us it has been shown that the fear exists that because the Bureau is essentially a Departmental body, it will not give unbiased attention to the interest of the soldier. This has been described by one witness as a "bogey," but it is quite evident to me that the feeling does exist to a marked degree. If the soldier can be induced to approach the Board in this way, all parties agree that much time will be saved and wasted effort avoided. For that purpose, therefore,—

Recommendation No. 1.

I recommend that the Veterans' Bureau should be under the control of a separate Commission, the personnel of which will have to be determined by the Government in consultation with veteran organizations. This Commission would serve without remuneration and have entire control of the Bureau in so far as the appointment and discipline of the officers who are charged with the responsibility of preparing and presenting cases is concerned, together with the right of fixing the qualifications of such officers. Sub-staff to be provided by the Civil Service Commission as at present arranged.

Recommendation No. 2.

That in any such reorganization provision should be made for an inspector to constantly exercise supervision over the work and preparation of cases in the District Offices of the Bureau.

Recommendation No. 3.

That the name of this body be changed to "The Pension Adjustment Service of Canada."

(B) Board of Pension Commissioners and Pension Tribunals

If the recommendation of the Committee is adopted, these bodies will be merged. My first word on this is that the principle of merger must be strictly adhered to. A fundamental principle of pension legislation since the outset was that members of the adjudicating bodies should be appointed for a definite period of time, thereby securing independence and also ensuring the possibility of securing men of high character and good standing to perform the work required. As the principle of life tenure of office is the fundamental policy in our judicial system, so must the principle of security of office be preserved in the pension adjudicating system. This principle was violated, inadvertently, in the 1930 legislation and that error *must not be repeated.* Consequently, the

idea of amalgamation and not abolition must be the basic principle in reorganization. It may be that, if the suggested changes work out as anticipated, there will be, in a short time, a surplus of personnel. That situation will have to be dealt with when the time arrives but I am absolutely convinced that in order to bring the various bodies up to date with their work, the existing personnel can be utilized adequately for some time to come. I must, however, strongly stress that in order to secure public confidence in the new administration, there must be no suggestion that either the Board of Pension Commissioners or the Pension Tribunals are being abolished. It must be clearly stated that in the interests of efficiency and in order to secure uniformity of administration and decision, it has been found desirable to amalgamate these two bodies but that none of the functions at present exercised by either one of them will be abandoned, and that the full right of public hearing will be preserved, with power to the adjudicating body to grant or reject claims as at present. I cannot stress too strongly the fact that if any impression were created that the Tribunal system was being done away with, the resentment would be so strong that it would be impossible for the new machinery to function satisfactorily. Rightly or wrongly, the Pension Tribunals are regarded as being favourable to the applicant, due probably to the fact that in performing their functions they come in contact with the public, while the other bodies, while just as sympathetic and just as considerate, are never seen. To my mind, the publication of a statement that the Tribunals be abolished, would create a public situation with regard to pension administration such as had not existed since the days of the Ralston Commission.

If the proposed reorganization is carried out, I think the following principles should be observed in the office of the adjudicating body at Ottawa:—

Recommendation No. 4.

(1) That by departmental arrangement, unprepared claims should be referred to the Veterans' Bureau for preparation and a sympathetic letter should go to the applicant, stating that his application in the present state of preparation could not be conceded, but that the Government has provided the facilities of the Veterans' Bureau for that purpose and that they are willing to co-operate with him in securing necessary evidence. Special provision would have to be made for claims presented by recognized Service Bureaus of Veteran organizations operating under Dominion charter or by qualified solicitors.

(2) That when a claim is presented to the Board and not conceded, the applicant should be notified.

(*a*) That his claim is not granted and full reasons given therefor.

(*b*) That he has the right to have his claim referred to the Veterans' Bureau for further preparation or to a field quorum of the Board, for hearing at a point to be arranged.

(*c*) That he must within a limited time, say ninety days, elect to accept either alternative and if no such election is made, the claim will be considered closed and can only be re-opened on presentation of new and relevant evidence.

I consider this procedure absolutely necessary if we are to obtain from time to time, a true picture of the progress being made in the Court of first instance at Ottawa. As I have shown, the impression has been created that there is hopeless congestion, whereas in fact a large part of the congestion is due to accumulation of claims which have never been prepared, or if prepared, have no chance of success, yet nevertheless they appear as potential pensioners.

Assuming that the reorganization is carried out, the next question arises as to the field hearings. As I have already intimated, the present system is

extremely cumbersome and very expensive. Nevertheless it is an absolutely essential part of the machine and sufficient personnel must be available to promptly overtake any outstanding claims. In order to do this it is essential that small quorums and limited staff should be available in the smaller places in order that these claims may be disposed of more expeditiously than at present. If the Government wishes to retain all the personnel at present utilized on tribunal hearings, it is impossible for the men in the small centres to receive prompt attention simply because the expense involved is prohibitive.

Recommendation No. 5.

Therefore, I recommend that careful study be given to the matter of simplifying the trial procedure in order that the personnel necessary to establish a court may be reduced to the minimum. For this purpose it may be necessary in all except the larger centres, to dispense with stenographic assistance. To my mind the Commissioner could make full notes of the evidence, to be signed by the witness and verified by the Advocate and this should be sufficient.

Recommendation No. 6.

That field courts should only give adverse decisions. All other decisions should be stated " to be reserved " and should not be promulgated until reviewed by a reviewing officer. If the reviewing officer concurs in the finding, entitlement shall be conceded forthwith. If the reviewing officer refuses to concur, then the applicant will be notified, not that his claim has been refused, but that it has been referred to the Court of Appeal. In this way the false hopes engendered by favourable decision will not arise.

Recommendation No. 7.

In connection with public hearings, I wish to draw attention to a complaint frequently made before us that the applicants are having difficulty in securing medical evidence because of the resentment of certain medical men at the treatment received at the hands of trial bodies and commission counsel. In any system which is approved, this feature should be seriously considered and I would make the following observations thereon:—

This situation must be corrected. Granted that in cases, medical men have drawn the longbow in favour of the applicant, yet this is no reason for casting wholesale aspersions upon members of an honourable profession. In my experience in civil courts, when a witness seeks to refresh his memory from a record, opposing counsel immediately objects, unless satisfied that the record was made at the time of the transaction and seeks to force the witness to depend upon his unaided memory. In this court we have the situation reversed. Unless the witness has records, his testimony is not to be believed. It is true that it is difficult to believe that a busy practitioner can remember what happened ten years ago. But this is not to say that he cannot. As a former Commanding Officer I am applied to frequently to confirm some incident on service which may aid a man's case. In most cases I am unable to do so. Yet not so long ago I was able to give material assistance to a claimant by recalling an incident that happened 16 years ago and I am just as sure of the facts of that case as I am of any incident which occurred within the last year. There were reasons which fixed the incident in my mind. Similarly, there may be incidents which fix the matter in the mind of the medical man. That is a matter for cross-examination and the degree of credibility to be accorded to the evidence is for the Trial Court, not the commission counsel. This situation should be adjusted at once in the interests of the applicants who are, otherwise, going to be seriously handicapped in prosecution of claims.

(C) PENSION APPEAL COURT

I would retain the Pension Appeal Court in its present form, but in view of the fact that it cannot possibly overtake all of its work in the near future, I recommend:—

Recommendation No. 8.

That power be given to the chairman to co-opt a judge of any Superior Court of Canada to make another quorum, or that he have power to co-opt any members of the court of first instance, whom he may select for that purpose. Such quorum to continue until such time as the court has overtaken all arrears.

Recommendation No. 9.

This will necessarily call for additions to the staff of the chief commission counsel and the chief pensions advocate but the provision of additional staff is absolutely necessary because of the accumulation of cases, and hardship is undoubtedly being caused by the delay. Additions to the staff of the chief pensions advocate for this purpose should be duly qualified barristers.

As I have indicated, I can see no way of removing the right of appeal as it at present exists and preserve the right of decision by the Trial Court hearing the man. In order to remove the anomaly which at present exists, however, I would suggest:—

Recommendation No. 10.

That instead of constituting the court of first instance the reviewing body, an officer appointed by the department and having adequate qualifications should have the duty of deciding whether or not the Crown will appeal. This officer should be absolutely free from influence and for that reason should perhaps be an officer of the Court of Appeal under the jurisdiction of the President.

Recommendation No. 11

I would suggest that some agreement should be arrived at between the now existing personnel for an immediate review of all outstanding appeals by Commission Counsel with a view to conceding those in which there is little prospect of success. This concession would have a very good effect and would assist in relieving the congestion of this Court.

I have not overlooked the oft-repeated suggestion of resort to the Civil Courts. There are, however, many objections to this procedure. Some of the Judges, say in Toronto, would have more work to do than they could handle in addition to their ordinary work, while others would have so little that they would have no opportunity of becoming thoroughly familiar with what is after all a very special branch of administrative work—also special knowledge is required for presentation, and the provision of trained advocates for so many courts would provide a real problem. There would also be little opportunity of acquiring uniformity of decision among some 200 Judges scattered over the Dominion and it is my considered opinion that this innovation would only result in more confusion and general chaos. After all, the Tribunal should be well abreast of its work in a very short time, the only difficulty will be that it cannot possibly reach every case expeditiously. The Civil system would meet this situation but it is doubtful whether this single advantage would outweigh the disadvantages I have suggested and the many more I could suggest. I am not convinced that the situation is so serious as to warrant such a radical

departure in principle. Again I stress that the existing machinery is adequate with modifications suggested if responsible officers sincerely try to make it work.

(D) Assessment Appeals

Recommendation No. 12

We have had considerable evidence on the matter of assessment appeals, and opinions expressed were varied. The preponderance of evidence is in favour of some system of appeal. The danger has been pointed out, however, that such right of appeal would cause an influx of applications which would be very adverse to the operation of any re-constituted administrative machine. There is this danger, but I cannot too strongly stress the fact that some improvement in the existing machinery is necessary. So long as the Board of Pension Commissioners is the final authority in matters of assessment, they are bound to be subjected to criticism and criticism is undoubtedly one of the features which tend to prevent the smooth operation of an organization. However, having regard to the fact that the 1930 legislation was imperilled by the accumulation of work which has been thrown upon it, I am loathe at this time to suggest setting up the right of appeal on assessment. The Chairman of the Board of Pension Commissioners informs us, that when they have been able to personally interview applicants for review they have found no difficulty in effecting adjustments. With the increased personnel which will be available if the recommendations submitted are put into effect, it should be possible for the Board to grant personal interviews to every applicant regarding his assessment and I think, therefore, that this system should be tried rather than the setting up of a new quorum.

(E) Medical Diagnosis

Recommendation No. 13

Representations made by the Tuberculous Veterans for improvement of facilities in establishing entitlement in their cases, in fact all cases involving diseases insidious in origin and of slow progression, were seriously considered by the Committee. It was found difficult if not impossible to adequately provide for this class of case by anything in the way of legislative enactment. I do believe, however, and strongly recommend that provision should be made whereby the Chief Pensions Advocate, or any body adjudicating upon pensions, should have the power at any time in case of doubtful diagnosis and particularly in cases of the class mentioned above, to refer the applicant for examination by a competent specialist or for hospitalization if necessary in order that a thorough diagnosis may be secured. At first appearance it may seem that this would be a very expensive procedure but I respectfully submit that on the contrary it would be an economical one. Evidence adduced before us shows that in many cases the applicant has gone through the whole range of the adjudicating bodies and secured entitlement only to find that the condition for which he claimed and for which entitlement was conceded did not exist. A proper diagnosis when the claim is first presented would enable the Board to give entitlement in some cases in which it otherwise could not do, or to satisfy the claimant that his application could not be supported, and would prevent many cases going forward which might otherwise be pressed. This is a most important feature, strongly stressed by all witnesses and is strongly recommended by me.

(F) BENEFIT OF THE DOUBT

Recommendation No. 14

As I have already indicated, I cannot from a strictly legal standpoint find any fault with the interpretation by the Court of Appeal, of Section 73, the Benefit of the Doubt Clause. At the same time I am of the opinion that this Section as interpreted does not go as far as I am sure Parliament intended it to go. I am quite sure that it was the intention to recognize the fact that active service in the forward areas under the conditions of the late war, did expose men to hardships which predisposed them to certain specific disabilities. I think this feature should be stressed.

It has been proved before the Committee that when the 1930 legislation was passed, it was the intention of the Parliamentary Committee charged with the responsibility of preparing such legislation, that in exercising the benefit of the doubt, adjudicating bodies should have the right to consider the actual character of the service rendered; that is, a man with a long service in a forward area with fighting troops should have a larger measure of the benefit of the doubt, especially where the condition complained of is one where strain and exposure would be a factor in giving rise to such condition. It is extremely difficult to express this in words, and as I have already indicated we have evidence before us to show that all adjudicating bodies do take this fact into consideration, but it is for consideration by Parliament whether this section as interpreted by the Court of Appeal, does adequately express the wish of Parliament at the time the legislation was passed, and if not, the Section should be amended to make the expressed will of Parliament clear beyond doubt.

(G) PENSION AGENTS

Recommendation No. 15

The suggestion has been made that provision should be made for the remuneration of Pension Agents, acting on behalf of the applicant. Limited provision is made for this now by Section 10, and I am of the opinion that this should not be extended. We have no desire to build up in this country a body of pension specialists promoting claims for their own benefit with the possible result of fraud and misrepresentation. Rather I am of the opinion that the restriction should be made more severe by amending Sec. 43, the penalty clause. This clause makes the attempt to collect, an offence subject to summary conviction. Being by way of summary conviction, it is subject to a limitation of six months within which proceedings may be taken. It is very seldom that these practices are discovered within six months, consequently I am of the opinion that the offence should be made an indictable one or that provision should be made whereby proceedings may be taken within two years.

(H) PENSION FRAUDS

While probably not strictly within the purview of the reference, the Committee has considered it advisable, in view of the publicity given to the situation, to make some investigation into this question of pension frauds. The information secured is disconcerting but not sufficient to warrant the belief that anything like wholesale fraud has been perpetrated. In the administration of an Act which involves the expenditure of some $60,000,000 per annum of Government money, it is too much to hope that there would not be some unprincipled persons who would seek to profit unjustly at the public expense. We must inevitably expect a certain measure of fraud at all times and a procedure so

strict as to make this practice impossible, would work very hardly upon the thousands of honest men and women who seek and require to avail themselves of the benefits of the Act. Yet the situation is sufficiently serious to warrant immediate action to eliminate fraud to the greatest extent possible.

I have received a return indicating in general terms the nature of frauds, real or alleged which have been detected. Some of these are not really frauds but innocent errors or mistakes. There are, however, a number of cases of detected fraud but the majority of them are not in respect of pension entitlement as reports might seem to indicate but in respect of dependent pensions. That is to say, a man may be fully entitled to pension for a perfectly obvious condition but having obtained this benefit he seeks to extend it by drawing allowances in respect to dependents who are not properly entitled thereto. Some of the largest frauds are in respect of widows properly pensioned at the outset but who have concealed the fact that they have re-married and by perjury have received money to which they are not entitled. Others represent men who are separated from their legal wives and have claimed in respect of a woman to whom they are not married. There is also the type of case where a man has believed himself legally married only to discover that the woman to whom he supposed himself married, was already married and not divorced, etc., etc. I have pressed the Chairman of the Board of Pension Commissioners strongly for evidence with regard to entitlement cases which after all is the feature with which we are particularly concerned, and he admits that the amount of fraud in respect of original entitlement is very small indeed. Fraud in cases of dependents is purely a matter of administration and can undoubtedly be prevented by a system which can be evolved for that purpose. The veteran bodies are particularly interested, however, in seeing to it that no avenue is left open whereby a man can secure entitlement to pension in the first instance by fraudulent means. The evidence which we have secured is sufficient to enable one to say that nothing has been shown to warrant the belief that there is any such amount of fraud in these cases as to give rise to public anxiety. The Departmental officers have been given ample opportunity of giving evidence on this score and have not done so.

Recommendation No. 16

We recommend, however, that every precaution be taken to secure the prevention of frauds of any character and that prosecution be carried out in every case where possible.

(I) SOURCES OF IRRITATION

Another matter to which our attention was drawn refers to five applications in which entitlement was recommended by the old Federal Appeal Board. The Board of Pension Commissioners took exception to the jurisdiction of that Board to give entitlement in these cases. However, the judgment of the Board which is in effect a judgment of a court of record, has never been set aside, and according to the record, these men should be entitled to receive the monies awarded to them. We did not go fully into the cases as they could not be considered within the scope of our enquiry, but the attention of the Government is drawn to the matter as a source of irritation making it difficult for the pension machinery to function smoothly. I submit that it is the duty of the Government either to have the judgment of the Federal Appeal Board set aside if it is in fact in error, but if not, it stands as a judgment in favour of the men and should be carried out. Such irritations do more to interfere with the smooth operation of an organization than anything else that can be imagined.

(J) DISABILITY TABLE AS AFFECTING AMPUTATIONS

At the conclusion of our deliberations Mr. Myers directed our attention to a long standing grievance as affecting amputation cases. He stated, and it was admitted, that in 1924 the Board of Pension Commissioners altered the table of disabilities whereby the percentage paid in amputation cases was increased. He argued, and it appears to be reasonable, that if a man was 75 per cent disabled as a result of amputation in 1924 he would naturally be 75 per cent disabled in 1919. Yet this amount had never been adjusted. He stated that the Amputations Association, while confident of the justice of their claim, nevertheless would, having regard to economic conditions, refrain from pressing this claim at the present time yet he desired that it should be noted. I am of the opinion that on the facts stated this question should be sympathetically considered at a more opportune time for there seems to be much justice in the claim advanced.

CONCLUSION

These are my findings upon the situation as I see it. It indicates a situation sufficiently serious to warrant immediate action but not nearly so serious as we were led to believe by returns submitted to Parliament. The figures submitted were literally accurate but in fact conveyed, and were susceptible of conveying, an entirely false impression of the true situation. It is difficult to understand the Departmental mind which sticks to statistics which when analyzed are capable of an entirely different meaning. I note that in the course of the Parliamentary debate, one of the Ministers endeavoured to ascertain if the facts were as shown and the answer he received was that the departmental officers adhered to the figures given. Of course the figures were accurate but analysis has shown that the number adversely affected were not nearly as great as it was made to appear. It is most unfortunate that information of this kind should be released without adequate information because it tends to produce unrest and discontent which inevitably will result in demands for drastic action with resultant legislation which, while it may cure one ill, may, as has often happened in the past, produce two other ills. It is my earnest hope that this investigation, conducted as it has been by men who have expert knowledge of the administration on the one hand and who have expert and extensive knowledge of the operations of the Administrative body on the other, may result in a scientific rearrangement which will cure existing evils without thereby creating new ones. In this connection may I express my individual appreciation of the effort of the departmental members to satisfy my thirst for information and for the friendly and co-operative manner in which they have approached the work of the Committee.

And in conclusion, may I say that it should be clearly understood that the findings herein set forth, the recommendations made are my own and that the organization which nominated me for this work is in no way responsible for anything written herein. When I was asked to serve I made it quite clear that I was to be quite free to approach this task without any limitations imposed. I would bring to it the special knowledge I had acquired by years of work on behalf of the Veterans of Canada but quite free to state the facts as I found them and the remedies which appeared available whether such findings or suggestions were satisfactory to my organization or not. In other words, I approached the task as a judicial duty, not as a partisan advocate of any class or organization. This I have done. It is quite open to the organization I represent to accept or reject it, in whole or in part. That now becomes their responsibility, I have discharged mine. I have, however, endeavoured to paint truly the pension situation as it is in Canada; to give to the returned soldiers

and to the people of Canada a comprehensive review of the whole system that there may be available in reasonable compass that information which all should have. In this I may not have been entirely successful but it has been the guiding motive in which I have written. It must never be forgotten that Canada has endeavoured to provide generously for these men and women who suffered as a result of war service and for their dependents. Neither must it be forgotten that in administration there has often been the appearance of depriving those entitled to benefits, of those benefits by administrative acts. It is useless to expect perfection in any organization into which the human element enters to so large an extent but I do hope that as a result of the deliberations of this Committee, the administration may be liberalized to the extent intended by Parliament and people. It is too much to hope that all dissatisfaction can be eliminated but we can hope that administration can be made so effective that justifiable criticism may be reduced to a minimum. And again I stress that legislation alone is not sufficient. Sympathetic co-operation of all officers is the fundamental principle and determining factor.

All of which is respectfully submitted.

(Sgd.) ALEX. ROSS,
Member.
(Sgd.) RICHARD MYERS.
(Sgd.) FRANK G. J. McDONAGH.
(Sgd.) W. C. H. WOOD.

SUPPLEMENTARY REPORT OF REVEREND JOHN KELMAN, TUBERCULOUS VETERANS' SECTION CANADIAN LEGION OF THE B.E.S.L.

The Report and Recommendations of Brig.-General A. Ross are concurred in with the following reservations:—

Pension Appeal Court

It is felt that sufficient weight has not been given to the expressed opinions of highly qualified medical specialists in tuberculosis in a number of cases, particularly where evidence of fact of the existence of tuberculosis during service or in the early years after service discharge is lacking. I feel that the Pension Appeal Court should refer such cases to another tuberculosis specialist of equal status for additional opinion if they are unable to accept the medical opinion already expressed.

Time Limits

That I am opposed to any restrictions as to time being imposed on pension applicants. This principle has been definitely accepted by Parliament who recognized the extreme difficulty confronting pension applicants in securing evidence without adding the handicap of time limit.

Pension Advocates

Having regard to the excellent work done by Pension Advocates and others who are not qualified barristers, I feel that any restriction that Pension Advocates be qualified barristers is unnecessary.

Reconsideration of Commission Counsel Appeals Allowed

That as it is apparent the greatest dissatisfaction exists with particular reference to those applicants whose claims were granted by the Pension Tribunal and later not granted by the Pension Appeal Court, and as it is our considered opinion that the interpretation placed on section 73 (Benefit of Doubt) has not accomplished what Parliament intended, we feel it desirable to remove as far as possible the dissatisfaction existing and therefore recommend:—

1. That in all pension applications granted by the Pension Tribunal and which were subsequently not granted by the Pension Appeal Court, such applicants be permitted to renew their applications before the Board of Pension Commissioners.

All of which is respectfully submitted.

(Sgd.) JOHN KELMAN,
Tuberculous Veterans' Section, Canadian Legion of the B.E.S.L

Mr. MYERS: I am submitting as an appendix to the report of General Ross, addressed to the Hon. Minister of Pensions and National Health, the following:

OTTAWA, ONT., January 24, 1933.

Colonel the Hon. MURRAY MACLAREN, M.D., C.M. (Edin.),
M.R.C.S., F.A.C.S., C.M.G.,
Minister of Pensions & National Health,
Daly Building, Ottawa, Ont.

HONOURABLE AND DEAR SIR,—It has been my privilege to represent on this Committee ex-service men, disabled by amputation or loss of sight. The members comprising this group have taken a broad and stable view of all Pension Act and Pension Machinery provisions and amendments.

In signing the majority report of this Committee I have, after consideration of all the evidence adduced and suggestions made, come to the view that we must ensure the application of two considerations:—

First: Equitable and reasonably prompt consideration for all just claims.
Second: Elimination of Pensions Administration expense where possible.

It is obvious that equitable consideration for just claims must depend upon (*a*) Humane interpretation of Pension Act provisions, and (*b*) the removal of irksome delays in reaching final decisions. I believe the majority report which I have signed provides the means for such consideration if the viewpoint of authority for decisions on interpretation is humane. The record of Pensions machinery and amendments clarifying provisions of the Act itself gives an evidence on the part of ex-service men and the public that humane consideration involving some benefit of the doubt, where a doubt existed, was not being given. Eleven distinct efforts through Parliamentary Committee and a Royal Commission etc. in the short period of 16 years, have searched for the source of dissatisfaction and sought to apply remedies. It is my hope at this juncture that recommendations at present promulgated may secure finality. It is not my object to open the door to claims which do not possess established merit, but it is my desire to assure that the claims of men with good service and apparent disabilities, should, when accompanied by reasonable evidence of service connection, be satisfied.

After careful examination of the evidence adduced, I am satisfied that there has been an effort on the part of the administration to give humane consideration. It has also been evident that the administration have felt their responsibility to the Treasury as well as to the man. The question of technically sound decisions has frequently been emphasized in their minds by the investigations of a representative of the Auditor General's Department (see 1930 Parliamentary record). Undoubtedly these factors have given rise to a general feeling among veterans and their friends that the Pension Act is being administered in a strict and highly technical manner to the exclusion of the benefit of the doubt consideration. From the evidence adduced, it would appear that humane consideration is being generally given when possible, but is often not apparent to the outside observer. In my opinion there has been confusion between what might rightfully be viewed as benefit of the doubt consideration, and what is more important to the claimant, i.e. a properly prepared case with his claim based on fact. This, then, emphasizes the necessity of proper preparation of each claimant's case in the first instance, or if found weak on presentation, proper ascertainment of obviously necessary evidence before representation. In this connection, the value of a friendly liaison of Pension Advocates with the Court of first instance at Ottawa cannot be overestimated. The exchange of views on cases under consideration, if possible by personal contact, would be highly valuable and would yield according to the evidence adduced, highly successful results. If provision for and insistence on adequate preparation of cases was the rule, there would be great economy of time and expense of Pension adjudicating bodies.

I, therefore, wish to emphasize the necessity of complete case preparation facilities, and my belief is that this could be assured with greater certainty, particularly in the minds of the veteran, if the Veterans' Bureau, as at present constituted, was placed under voluntary independent commission jurisdiction (statutory) having no connection with the Department of Pensions and National Health, other than salary and expense appropriation. Accessibility of records would be an obvious necessity. The uniformity of Advocate office results can only be secured by the provision of a travelling official responsible for instruction and inspection. The scope of the Bureau should be enlarged

to cover all claims affecting veterans' welfare and to be a personal service department for veterans at large in their dealings with the several departments.

It is considered that the Commission in the discharge of its duties would be familiar with the work of Advocates and results achieved. From their knowledge, improvements in Bureau personnel and suggestions leading to the solution of fundamental difficulties in the preparation, presentation and adjudication of claims would result. Further, they should consider suggestions emanating from veteran organizations affecting the Pension Act and administration, and recommend suitable action.

I have a further suggestion to make, that the deliberations of the Committee have shown the value of personal contact of representatives of veterans' organizations and those charged with the duty of administering the Pension Act and other benefits, and it would appear to be desirable that this contact be continued. I, therefore, suggest that this, or a similar Committee, meet for a few days once each year, preferably just before the assembling of Parliament, in order to study the working of the Pension Act, etc., and to receive, consider, and advise upon any representations made by veterans' organizations and others looking towards the enlargement or the general working of the Pension Act and other veteran legislation. I am convinced that such a Committee would not only provide the means whereby the Government could obtain the best information and the soundest advice upon all matters relating to the veterans' problems, but would make for greater confidence in the mind of the public.

All of which is respectfully submitted.

(Sgd.) RICHARD MYERS.

Mr. McDONAGH: The following is a copy of the communication I am sending to the Minister of Pensions and National Health:—

OTTAWA, ONT., January 24, 1933.

Colonel the Hon. MURRAY MACLAREN, M.C., C.M. (Edin.),
M.R.C.S., F.A.C.S., C.M.G.
Minister of Pensions and National Health,
Daly Building,
Ottawa, Ont

HONOURABLE AND DEAR SIR,—I wish, as a member of the Committee to associate myself with the resumé of the activities of the Committee as submitted by Brig.-Gen. Alex. Ross, K.C., C.M.G., D.S.O., V.D., which I feel will be a valuable contribution to the work of this Committee.

I wish, also, to associate myself with the remedies proposed by Brig.-Gen. Alex. Ross, as I believe they carry out the principles as adopted by the majority of the members of this Committee. I feel that, in order that confidence may be established in the administration of the Pension Act, there should be three bodies dealing with the administration of this Act and that they should have the powers as outlined in the remedies suggested by Brig.-Gen. Alex. Ross and that the bodies named by him should be known by the following names:—

1. Veterans' Adjustment Service.
2. A Court of first instance, known as Pension Tribunal System.
3. Pension Appeal Court.

I consider that it is of primary importance to point out that the wish of the people of Canada, as expressed in pension legislation by the Parliament of Canada, will fail if all the bodies administering the pension legislation are not

animated by the highest motives, and acting in a spirit of co-operation with the man and the state, and not in the position of being between the man and the state. The principles of Pension legislation must be carried out in justice to both the man and the state and all administrative officers must be actuated by a spirit of justice and equity.

Canadian Pension Legislation is an attempt on the part of the people of Canada to give to those Cánadians who offered their all during the war, the same square deal which those men gave to Canada, and the inclusion of the Benefit of the Doubt principle clearly indicates this.

Representing on this Committee, as I do, men who saw service on an active front and who are to-day suffering as a result of such service, I have pleasure in associating myself with the majority report which, if put into effect, will I feel, remove the major causes of complaint and will establish that confidence in Pension Machinery which has been obviously lacking as is apparent when we realize that in sixteen years, there have been some eleven investigations authorized by Parliament.

All of which is respectfully submitted.

(Sgd.) FRANK G. J. McDONAGH.

RIDER BY COL. W. C. H. WOOD, DOMINION PRESIDENT OF THE ARMY AND NAVY VETERANS IN CANADA

While fully concurring with all the other representatives of the Associated Veterans, I would carry my concurrence even further, by laying particular stress upon the fact, that there were some essential and fundamental points upon which the whole Committee concurred last September, and which I still think are more or less points of general agreement to-day.

We all agree that the ideal system should be as simple as A.B.C. in its general principles, and that this A.B.C. should consist of:—

(A) Adjustment, which should be made as nearly complete as possible before any case concerned is submitted to the court of first instance; also that it should be under a commission, and have a travelling inspectorship all over the Dominion, and this inspectorship should have absolute authority to inspect the adjustment services of any of the associated veteran bodies themselves.

(B) Adjudication should be made as nearly final as possible by a single Dominion-wide court of first instance, namely, a Pension Court, which should make personal contact with all properly adjusted applicants and which should have all the necessary powers needed for adjudicating upon the complete medical and legal evidence required.

(C) Appeal to a pension court of appeal and review is, when justified, sine qua non. The benefit of the doubt, with special reference to the nature of the service, should be stressed throughout.

Whatever differences may exist, it is important that the above prime objectives of the whole attack on the fundamental principles involved should not be obscured by individual or even collective, differences of opinion, on either the suggested statics or dynamics of this rather complex administrative question.

(Sgd.) W. C. H. WOOD.

REPORT OF L. P. SHERWOOD, MEMBER, CONCURRED IN BY BRIG.-GEN. H. F. McDONALD, C.M.G., D.S.O.

At the outset of any pension investigation it seems appropriate to consider the figures of the Canadian Expeditionary Force and the pensions in payment in respect of the personnel thereof.

General figures as to the Expeditionary Force are as follows:—

Number of enlistments	619,636
Served in Canada only	195,047
Served in England	80,000
Served in Russia, Asia, etc., and in garrisons such as Bermuda and St. Lucia	9,567
Served in Western theatre of war	346,531

It will be observed that these figures do not balance, no doubt because some of the personnel shown as having served in one theatre, served also in another theatre or theatres.

The total number died on service is given as 59,544.

The following statement was made to the Committee as representing the total of persons receiving pensions, addition to pensions, etc., under the Act, and their classification as at 31st August, 1932:—

Disability pensioners in receipt of pension	77,071	
Number of wives for which additional pension is being paid	57,088	
Number of children for which additional pension is being paid	99,606	
Number of dependent parents for which additional pension is being paid	1,941	
Number of widowers' allowance in lieu of wife	303	
		236,009
Number of widows, parents, foster parents, orphan children, brothers and sisters	19,162	
Number of additional allowances being paid to widows for their children	5,632	
		24,794
Grand total of number of persons in receipt of benefits under the Pension Act		260,803

It will be observed that, at the present time, Canada is paying disability pensions to about 13·7 per cent of total enlistments, deducting therefrom the number who died on service.

The number who served in the Western theatre was 346,531. There were other theatres of war in which Canadians served, and in which casualties were probably high in comparison to number engaged, but the numbers engaged were small in comparison to total enlistments or the Western front. The disability pensioners (77,071) represent 23·3 of the number who served in the Western theatre, after deducting therefrom the number who died on service.

The Board of Pension Commissioners' records for the fiscal year ending March, 1932, which appear in the Annual Report of the Department of Pensions & National Health, contain a comparative statement showing pensions in force under the Pension Act as at the end of the fiscal years 1918 to 1932, and the annual liability in respect thereto.

An indication of dependent pensions has been given above, but figures as to disability pensions seem to be the more material to the present inquiry. As to disability pensions, the following is the situation:—

	Pensions in force	Liability $ cts.
1918	15,355	3,105,125 55
1919	42,932	7,470,729 02
1920	69,203	14,335,118 41
1921	51,452	18,230,697 16
1922	45,133	17,991,535 00
1923	43,263	18,142,145 00
1924	43,300	18,787,206 00
1925	44,598	19,816,380 00
1926	46,385	21,456,941 00
1927	28,027	22.811,373 00
1928	50,635	24,374,502 00
1929	54,620	26,095,150 00
1930	56,996	27,059,992 00
1931	66,669	29,226,208 00
1932	75,878	30,998,571 00

Annual reports of the Pension Commission and of the Department give figures of pensions awarded and refused during the fiscal years ending 1921 to 1932. These are as follows:—

	Awarded	Refused	Total
1921	7,562	3,573	11,165
1922	2,701	1,764	4,465
1923	2,017	*	*
1924	1,893	1,467	3,360
1925	2,338	2,128	4,466
1926	2,239	1,627	3,866
1927	2,050	1,986	4,036
1928	2,452	1,307	3,759
1929	3,279	13,805	17,084
1930	2,358	15,240	17,590
1931	3,710	10,041	13,751
1932	3,857	7,578	11,435

* Refusals not indicated.

The record of applications awarded in the year 1932, does not reflect the claims filed. To arrive at this number, there must be added a substantial portion, say, four thousand, of five thousand claims accumulated in the years 1931 and 1932, hereafter to be referred to.

It will be observed that awards and refusals do not correspond with the number of pensions in payment annually. This is on account of discontinuance of pension where disability has ceased, and reinstatement of pension where disability has increased or persisted.

Mention might be made, at this point, of the machinery from time to time in existence for dealing with pension claims.

The 1919 Pension Act created the Board of Pension Commissioners, which was the body having complete and exclusive jurisdiction in respect to pension matters. The number of Commissioners, including a Chairman, is 3.

In 1923 the Federal Appeal Board was created. This body had an appellate jurisdiction from the Commission, in respect to questions of entitlement, but dealt with the evidence and record which had been before the Commission without addition. It was composed of 5 to 7 members.

The 1930 legislation made radical changes. The Board of Pension Commissioners was continued, and to it all claims for pension are as heretofore to be made in the first instance. It has complete authority to make grants, but no authority to refuse. Where pension is not granted, a reference is made of the case to a Chief Pensions Advocate and a Chief Commission Counsel for the purpose of having it brought before a Pension Tribunal.

This Pension Tribunal is a judicial body, entirely independent, and is a court of first instance for the decisions of claims on such evidence as may be brought before it. Its composition is 12 members, including a Chairman.

The 1930 legislation created a third body, the Pension Appeal Court, to which appeals lie from the Tribunal, at the instance of the applicant or the Crown, to be decided upon the record as constituted before the Tribunal. Its composition is 3 members, including a President.

Under the 1930 legislation, the Federal Appeal Board disappeared, and the numerous cases remaining undisposed of that body were automatically referred for presentation to the Tribunal. The legislation authorized the renewal of pension applications, notwithstanding that they had been ruled upon by the Appeal Board adversely to applicant.

Reference has been made to Chief Pensions Advocate and Chief Commission Counsel. A feature of the 1930 Act was the creation of a Veterans' Bureau under a Chief Pensions Advocate. The function of this Bureau is to assist applicants in the preparation and presentation of their claims to the pensioning bodies, at the expense of the country. Chief Commission Counsel and his staff were appointed to look after the interests of the Crown.

The Commission is a judicial and administrative body. In addition to the grant and refusal of entitlement its function is to administer pension after award. This includes the initial examination and assessment of disability pensioners and periodical examinations for assessment purposes thereafter. It includes also the grant of various additions to pension and allowances under the Act. Generally stated, the duty of the Commission is the grant and supervision of benefits receivable by persons under the Act who at present number 260,803.

The other pensioning bodies have to do, almost exclusively, with adjudication upon entitlement.

The main purpose of the 1930 legislation was to enable the applicant for pension to appear personally with his witnesses before a body charged with adjudicating upon his claim, and to adduce such *viva voce* evidence as he should think desirable. The Veterans' Bureau was constituted for the purpose of providing trained personnel to assist him in the preparation and presentation of his case.

The pension situation having been thus briefly outlined the various complaints as to the administration of the Act which were received by the Committee may be dealt with.

The first complaint was that of congestion.

The annual report of the Department shows that between 1-10-30 (the effective date of the 1930 legislation), and 31-3-32, 29,427 applications came before the Veterans' Bureau. These were made up of applications received by the Commission, and referred as not being conceded, and of undisposed of Federal Appeal Board cases.

The situation at this time appeared to indicate that the Pension Tribunal would be overwhelmed by this accumulation, and an amendment was passed which is known as the " automatic reference." This required the Commission to reconsider all applications referred by it between October 1, 1930, and August 3, 1931, which had not been notified to the Tribunal as ready for hearing. This amendment also required the Commission to refer cases only at the request of applicant.

Before the Committee, Colonel Morrison, Chairman of the Tribunal, stated that prior to 3-8-31, his information was that 19,447 applications were in the hands of the Veterans' Bureau for submission to the Tribunal. The amendment of 3-8-31 left the Pension Tribunal with 4,207 applications. Presumably, the result of the automatic reference was to throw back on to the hands of the Commission, 15,247 applications.

As of 31-8-32, there were 11,354 cases in the hands of the Veterans' Bureau, being cases referred by the B.P.C. under the 1930 Act, and automatically referred back to the B.P.C. by the 1931 amendment. These 11,354 cases are actually before the Commission, but as a matter of convenience and expediency are being retained by the Veterans' Bureau. They are cases, of course, which, whether or not dealt with adversely to applicant by the Commission and the Federal

Appeal Board prior to the 1930 legislation, have actually been considered by the Commission under the 1930 legislation on at least one occasion, and disposed of adversely to applicant, in that entitlement was not conceded.

As of August 31, 1932, there were approximately 8,300 other cases before the Commission. Of these, 3,300 were classified as being for consideration as and when they could be disposed of. Since the capacity of the Commission, as presently constituted, sitting in two quorums, is over two thousand cases per month, and since the Medical Branch of the Commission, according to the Chief Medical Adviser, is abreast of its work, it may be expected that these 3,300 cases together with current applications, can be disposed of in the course of a month or two. The Chairman of the Commission stated that, leaving out of consideration the balance of five thousand cases, the Commission can be considered as being up to date. Of this group of five thousand cases, 2,090 remained over from the calendar year 1931, and 2,910 accumulated since January 1, 1932. As to these 5,000 the Commission reports, and it seems reasonably clear, that none are widows' claims and none are urgent treatment or high disability claims. They have been left in abeyance to be dealt with as and when circumstances may permit.

As to the eleven thousand odd cases in the Veterans' Bureau, Chief Pensions Advocate reported that these had not progressed to that stage of preparation which warrants their being submitted to the Commission for consideration at the present time. This statement is subject to modification as to 550 cases in which available evidence has been collected. These 11,354 cases less 500, net—10,804 cases, are in the hands of local advocates and in course of preparation or awaiting completion.

Inquiry was made by the Committee with a view to ascertaining the character of these accumulated claims, that is, to what extent the group was composed of death or severe disability cases, and to what extent the claims may be considered to be well founded, that is, the percentage which might be expected to be ultimately established.

As at the adjournment of the Committee on 30-9-32, no analysis and classification had been made of the eleven thousand odd cases then in the hands of the Bureau, but Chief Pensions Advocate stated that a classification had been made of 25,767 disability applications in the hands of the Bureau on 31-3-32. This classification, which must have included substantially all, if not actually all, of the disability claims included in the 11,000 cases, revealed the following:—

8,378 were Class 1—applicants with severe disability.
530 were Class 2—applicants whose disability was not severe and non-progressive.
16,330 were Class 3—minor disability cases and congenital conditions.
529 were Class 4—Sec. 12 of the Act, "misconduct" cases.

Chief Pensions Advocate stated that another classification of the same cases had been made which showed that out of 25,767 there were 8,033 claims by applicants already pensioners, who were applying in respect of some additional condition. Of these, the degree of disability was as follows:—

From 1% to 25%	6,472
From 25% to 50%	1,081
From 50% to 75%	291
From 75% to 100%	189

In view of the practice of the various pension bodies of giving preference to widows' applications, urgent treatment cases and high disability claims, cases of this nature, included amongst the 11,000 under consideration, must have been substantially disposed of at this date.

Undisposed of Federal Appeal Board cases remaining in the hands of the Veterans' Bureau at the time of the sittings of the Committee, that is, not presented to the Tribunal, were stated by the Chief Pensions Advocate to be 1,616. He stated that the Veterans' Bureau had reviewed all these cases and where there appeared to be a claim probably susceptible of being established, the applicant had been communicated with. The fact that they are still outstanding is, therefore, because no valid claim appears to exist, or because of inaction on the part of the applicant. It was estimated that not more than 10 per cent of these would ever come forward for hearing.

Of the accumulation in the hands of the Bureau, including "automatic reference" cases, and undisposed of Appeal Board cases, it was estimated that not more than 10 per cent were capable of being established. It must be recognized that this is an estimate only. Chief Pensions Advocate was emphatic that with regard to the claims in his hands, 75 per cent had not the least prospect of success.

The 5,000 claims above referred to as being in the hands of the Commission and held in abeyance, have not been definitely classified—that is, they have not been reported upon in detail by the Commission itself. The Commission has stated that of all applications awaiting decision by that body, 93 per cent are of applicants whose claims have already been considered and reconsideration is being asked, or they are already pensioned for one or more conditions and are asking a pension for some new condition.

This estimate may be high, in view of a statement made to the Committee by the Chief Medical Advisor to the Commission, who said that approximately 20 per cent of applications coming up daily are of individuals who have never made an application for any disease or injury. But the percentage of so-called "repeaters" is probably somewhere between 80 and 90.

Evidence was that urgent treatment cases brought to the attention of the Commission receive consideration, and a ruling as to entitlement is given, generally speaking, within twenty-four hours. This ruling has, of necessity, to be based upon such information as is then available. The Chairman of the Commission stated that these undisposed of cases may be taken as being minor disability claims and in the same category as that shown by the Veterans' Bureau analysis. The fact that nearly all applicants have had at least one ruling by the Commission indicates that the claims in question are unsubstantial or not supported by evidence or at least ones not of obvious entitlement.

Upon the foregoing pages there is quoted statistics of the awards and refusals by the Commission from year to year, and also the number of disability pensions and annual liability involved. From these statements it will be observed that the period 1929-32 shows an extraordinary increase in the number of applicants for pension and also a substantial increase in the number of pensions awarded.

A feature of these figures which is noticeable is that, whilst there was a very material increase in the number of disability pensions over the years 1929 to 1932, the annual financial liability did not greatly increase. This prompted a comparison with earlier years which disclosed the following:—

	Disability pensions in force		Liability
1925	44,598		$19,816,380
1924	43,300		18,787,206
Increase	1,298	Increase	$ 1,029,174
1926	46,385		$21,456,941
1925	44,598		19,816,380
Increase	1,787	Increase	$ 1,640,561
1927	48,027		$22,811,373
1926	46,385		21,456,941
Increase	1,642	Increase	$ 1,354,432
1930	56,996		$27,059,992
1929	54,620		26,095,150
Increase	2,376	Increase	$ 964,842
1931	66,669		$29,226,208
1930	56,996		27,059,992
Increase	9,673	Increase	$ 2,166,216
1932	75,878		$30,998,571
1931	66,669		29,226,208
Increase	9,209	Increase	$ 1,772,363

It will be observed that in the earlier years, as for instance, 1924 and 1925, an increase in pensioners of 1,298, caused an increase in liability of $1,029,174, whereas an increase of pensioners in 1931 and 1932, of something over nine thousand, caused an increase in liability of only about two million dollars. That is, whereas the increase of pensioners in 1931 and 1932 was between eight and nine times that of the annual increase between 1924 and 1925, the increase in annual liability was only about twice as much.

It is unsafe to draw general conclusions from statistics and the increase of pensioners since 1930 includes a great number of re-instatements of low disability pensioners under the 1930 legislation. The departmental reports show the re-instatements to pensions as 7,901 in the fiscal year ending 31-3-31, and 7,268 in the fiscal year ending 31-3-32. These reinstatements are included in the reports of pensions annually in payment and the financial liability, but are not included in the figures of awards appearing on the preceding pages. But the statistics certainly suggest that former members of the forces, during the economic depression, have been claiming with respect to disabilities which were so small in extent, that during good times they did not bother with them. This inference would account in part for the increase in applications and offers a possible explanation for the increase in pensions actually awarded. The analysis also confirms the evidence from other sources that the present accumulation of claims is largely composed of applications respecting disabilities, minor in extent. Incidentally, it may be remarked that the figures appear to support a statement of the Chairman of the Commission that the underlying object of many of the present applications is an attempt to qualify for War Veterans' allowance or relief.

The foregoing remarks in respect to alleged congestion have dealt primarily with the Pension Commission, but have incidentally disclosed the situation with respect to the Veterans' Bureau.

The Veterans' Bureau has virtually become the clearing house for claims in respect to entitlement. The Pension Commission receives the great majority of applications in the first instance from the individual applicant. Doubtless, in many of these claims, it is possible for the Commission to concede entitlement,

as for instance, where the claim is based on a wound or injury of which there is more or less complete and detailed record in the military documents, or where the applicant is already a pensioner for one condition and the new disease claimed upon may reasonably be considered to have arisen out of the disease for which pension is already in payment.

Since the 1930 legislation, there have been a vast number of references by the Commission to the Chief Pensions Advocate and Chief Commission Counsel. These claims have been passed to the Veterans' Bureau, and applicant and the local Pensions Advocate brought into contact. Generally speaking, the claims are then prosecuted before the Tribunal and Appeal Court by the Veterans' Bureau on behalf of the applicant. Since the amendment of August, 1931, was passed, by which cases previously referred by the Commission were automatically referred back, the Veterans' Bureau has been in a large measure conducting the claims before the Commission. That is, contact with the applicant was established before the amendment, and the Bureau is now representing the applicant before the Commission. In a large number of cases, of course, applicant is represented before the Commission, Tribunal and Court by an Adjustment Officer of some veterans' organization, or by some other agent of his own choosing.

Where a claim for pension cannot be directly based upon something of record in the service period, continuity must be shown, and experience and a certain understanding of medical science is necessary in the preparation of a claim, in order that evidence of a material character may be selected. Obviously, it is impossible for the average applicant to satisfactorily prepare his own case.

One opinion most definitely expressed before the Committee was that complete and careful preparation was necessary in respect to pension claims. This point was mentioned by the representatives of the various pensioning bodies, and was particularly stressed by the adjustment officers of the veteran organizations who gave evidence.

Preparation of cases is essentially in the interests of the applicant, but it may also be taken for granted that the properly prepared case can be most expeditiously presented and disposed of by a pension adjudicating body.

There are substantial grounds for assuming that by the continued operations of the Veterans' Bureau, the accumulated cases can be disposed of by the Commission and Tribunal at approximately the rate at which they can be prepared by the applicants in conjunction with the Bureau. There is also reasonable expectation that the Bureau will be able to handle the arrears and current applications from time to time. The Chief Pensions Advocate reported that the Bureau, as presently constituted, is substantially adequately staffed to meet requirements; this with the exception of the Toronto district. If continued operations should reveal that present staff is inadequate, there is at the present time, authority in the Minister of Pensions and National Health to authorize an increase.

It is not unreasonable to regard the Veterans' Bureau as an essential adjunct to the adjudicating bodies. Faced with an enormous task, it appears to have made good and orderly progress and there was no evidence before the Committee of which any other inference could be drawn than that it commands the confidence of the applicants in general. Upon its continued efficiency will largely depend the satisfaction or otherwise of the individual applicant and the rapidity and expedition with which the adjudicating bodies can dispose of claims.

Alleged congestion considered in reference to Pension Tribunal:—

Prior to the amendment of August, 1931, the situation was that the Tribunal appeared to be overwhelmed with the number of cases referred by the Commission to the Chief Pensions Advocate and Chief Commission Counsel, together with undisposed of Federal Appeal Board cases.

As of July 31, 1932, the Tribunal had given a decision in 6,602 cases, and a further 307 cases had been withdrawn, making 6,907 cases disposed of, in a period of 21 months.

Before the Committee, Colonel Morrison, Chairman of the Tribunal, stated that prior to August 3, 1931, his information was that 19.447 applications were to be referred to the Tribunal. The amendment of 3-8-31, left the Pension Tribunal with 4,207 applications. According to a statement filed with the Committee, there were, as of 31-7-32, 2,408 cases undisposed of. Some of these cases had actually been heard and decision only was pending. In others, there had been disagreement as to decision, and in others partial hearings. The cases actually not heard were 1,908. This figure apparently does not include undisposed of Federal Appeal Board cases. These undisposed of F.A.B. cases number about two thousand. Chief Pensions Advocate stated the exact figure to be 1,616. As to them it was said by the Chairman of the Tribunal and the Chief Pensions Advocate, that from their experience they would expect not more than 10 per cent of these to actually come forward for hearing. Leaving out of consideration the undisposed of F.A.B. cases, the Chairman of the Tribunal estimated that it would take four months to clean up these arrears.

Approaching the matter from another angle, an estimate was made that to clear off the accumulation and at the same time deal with current business at the average rate of which cases have been prepared for the Tribunal over a period of months, would take about nine months. These estimates were based on the capacity of the Tribunal which was reckoned to be 400 cases per month.

The Tribunal has dealt with 6,909 cases in a period of 21 months, that is an average of 329 per month. During the period January to July, inclusive, of 1932, the number of cases referred has averaged about 306 per month. This would leave the Tribunal only a margin of 23 cases over those accruing from day to day. If this margin of 23 over current references were taken as indicating the rate at which arrears would be cleaned up, the process would occupy a very long period.

It appears that other factors must be taken into consideration. The rate at which cases were disposed of in the current year for the months for which statistics are available, are as follows: January, 449; February, 471; March, 351; April, 326; May, 368; June, 323. These figures show a considerable falling off in the numbers disposed of monthly, and it is probable that the falling off is accounted for by the fact that sufficient cases are not ready for the Tribunal to enable it to function economically. This consideration was suggested by the Chairman of the Tribunal in another connection. It would seem that no very definite estimate can be made of the time which would be required by the Tribunal to get up to date. The controlling factor appears to be the rate at which cases can be prepared for presentation. The preparation lies with the applicant and Veterans' Bureau.

Alleged congestion considered in reference to the Pension Appeal Court:—

The situation with reference to the Pension Appeal Court is quite plain. The Tribunal commenced to operate approximately November 1, 1930, and the Appeal Court was not completely constituted and able to function until the early part of February, 1931. During the three months' interval, the Tribunal had rendered decisions in 645 cases.

By April 20, 1932, cases in which notice of intention to appeal had been filed, and in which the appeal had not been disposed of by the Appeal Court, numbered 1,525. On August 31, 1932, the Tribunal had decided 6,751 cases, out of which 3,942 appeals had been taken; 2,445 appeals had been finally disposed of, 30 decisions were pending, and 1,467 appeals had not yet come before the court. This shows the average monthly output of the Appeal Court, making no allowance for vacations, as 128 cases. To dispose of the arrears alone would occupy a period of some eleven months. At the present time, the Court

is just keeping abreast of current appeals, and therefore, if appeals continue to be filed in the same proportion to Tribunal decisions, the arrears will never be overtaken.

The only solution is to double the capacity of the Court. The Court as presently constituted, consists of three members and three in the quorum, except by consent of both parties. The Act provides that in the case of hearing by two, if there is a disagreement, the appellant fails. Naturally, this provision does not encourage consent by appellants. One arrangement which would permit of the Court overtaking arrears, would be the appointment of an additional member, and an amendment of the Act providing that two members sitting together should constitute a quorum, and that in the event of a difference of opinion, the appeal shall be reheard by a bench of at least three. This arrangement would necessitate, so far as the Court is concerned, in addition to the extra member, an increase in staff of two stenographers. It would doubtless necessitate an increase of one or two Commission Counsel with the necessary stenographic staff, and possibly a similar increase in the strength of the Veterans' Bureau.

Since the Pension Appeal Court is final in pension matters and is the authority constituted for the interpretation of the Pension Act, some safeguard would be necessary against the possibility of conflicting decisions of the two quorums of the Appeal Court. This could be looked after by a provision in the Act that, in the event of any decision of a quorum of the Appeal Court turning upon the determination of any point of law being inconsistent with any previous decision of the Court or a quorum thereof involving such point of law, the case may, at the instance of any party, be reviewed by the full Court.

The evidence in regard to congestion and inferences from information before the Committee may be summarized as follows:—

Of the cases before the Commission, some 5,000, as has been stated, have been put aside as being of minor moment in order that consideration of current applications may not be impeded. Some early action in regard to these 5,000 cases is imperative. But in the meantime, they may be regarded as similar in character and degree of preparation, and added to the 11,000 odd cases before the Bureau. These would form a group of some 16,000 cases of which, say, 800 will be found to be prepared and ready for adjudication by the Commission, leaving some 15,200 in course of preparation by applicants and Veterans' Bureau. Of the total, some 2,000 may result in pension award and the balance, or some 14,000 are destined to be rejected.

Official returns as presently constructed give an entirely erroneous impression of conditions. They baldly indicate 19,000 to 20,000 cases as before the Commission. Actually the situation as 31-8-32 may be roughly indicated as follows:—

Before the Commission—	
(1) Current cases awaiting disposal (3,300 with B.P.C. and 550 with V.B.) ..	3,850
(2) Minor disability cases awaiting disposal	5,000
(3) Cases ruled upon and not admitted—now in abeyance awaiting preparation by applicant or his request for reference to Tribunal	10,150
	19,000
Before the Tribunal—	
Ready for hearing	2,000
Total	21,000

Certain statements were made in the House of Commons, reported in Hansard of date April 7, 1932, to the effect that, at that date, there were nearly 30,000 applications for pension and " . . . . at the rate those cases are being heard they will never be disposed of in the history of men. Those applicants are dying all over the country, and they have not yet been given an opportunity to be heard . . . . " Whilst the figures employed were accurate the inferences drawn therefrom were misleading. Whilst the number of

applications undisposed of is great, those involving high disabilities are comparatively few. Substantially, all have been considered on at least one occasion by the Commission, only a comparatively small number are in the state of preparation which would warrant reconsideration by the adjudicating bodies and only approximately 10 per cent are estimated as susceptible of resulting in an award of pension.

Of the 11,000 odd cases with the Veterans' Bureau, 550 have been reported as in the stage of preparation which would justify submission for decision. Applying the same ratio, i.e. one out of twenty, to the 9,000 odd cases before the Commission, it may be assumed that 450 of these 9,000 are actually completely prepared and supported by evidence. There are 2,000 cases ready for the Tribunal. Thus, out of 21,000 or 22,000 accumulated claims there would probably be 3,000 or 3,100 ready for adjudication.

Notwithstanding any estimate of the intrinsic merit of any individual application, every claimant has a right to be heard by the pension adjudicating bodies and, whether prepared or otherwise, there are on hand and not finally dealt with, claims to the number of 21,000 or 22,000. The 2,000 before the Tribunal represent approximately five months' work on the part of that body. The 19,000 or 20,000 before the Commission represent over a year's work on the part of that body.

It is perhaps a reasonable assumption that, of the 11,000 cases in the hands of the Veterans' Bureau, a substantial proportion of applicants will never bring them forward for adjudication. As has been stated, the Bureau has estimated that only a small portion have any prospect of success and many applicants may be expected, on the advice of the Bureau, to abandon their claims. As to the balance—the well prepared claim is susceptible of being disposed of fairly readily, and in the case of a claim with no sound foundation in law and lacking medical or other evidence to support it, when an applicant insists upon proceeding, the advocate or adjustment officer will have fairly discharged his duty if he states the facts and the consideration and decision by the adjudicating body should be reasonably expeditious.

Up to the present point enquiry has been as to the accumulation of cases presently before the pension adjudicating bodies. Such information would be of little value were it not supplemented by some consideration of any indication there may be of the probable number of claims which will continue to arise.

In the foregoing pages will be found reports of the awards and refusals by the Commission during succeeding fiscal years. Applications coming before the Commission during the years 1925 to 1928 inclusive, and those of the years 1929 to 1932 inclusive, are in marked contrast. They are as follows:—

1925	4,466	1929	17,084
1926	3,866	1930	17,590
1927	4,036	1931	13,751
1928	3,759	1932	11,435
			4,000*
Total	16,127		63,860

* Estimate of claims received but not disposed of in the fiscal year 1932.

Applications for pension during the past four years have been just four times as many as in the four years immediately preceding. Since the latter four years were ones of extraordinary depression, it is not an unreasonable speculation that a large portion of the claims arose out of economic conditions combined with the coincident publicity throughout the country in connection with the 1930 legislation. It is reasonable to suppose that most of the former members of the forces now suffering a disability will have claimed in respect thereto and that, in the future, the applications should not, at most, exceed in number those of the period preceding 1929, and may be considerably less.

There is one point which must be emphasized in considering present congestion and the probable volume of applications in future. The present accumulation fairly obviously results from the fact that, so far as the Commission is concerned, it has never, except during a short period under the 1930 Act, been able to finally dispose of any application except by the award of pension. The earlier Pension Acts specified a limited time within which application must be filed but such limit was extended from time to time and finally removed. During all these years, any applicant could demand reconsideration of his case at any time upon presenting anything that could, by any stretch of imagination, be regarded as new evidence. The 1930 legislation included a provision which appears sound and reasonable. That is, it provided that when a case had been disposed of by the Pension Appeal Court or by the Tribunal and not appealed, the decision was final and the case could only be re-opened by consent of the Court. As to such cases there is substantial finality and in considering the probable number of future applications they may be excluded. But the 1931 legislation re-introduced, so far as the Commission is concerned, the old perpetuity evil by providing that the Commission must not refer a claim for hearing by the Tribunal except by request of the applicant. The result is that any applicant can keep his claim open indefinitely and require it to be reconsidered as and when he may submit items of evidence in detail. This is bound to result in a vast accumulation of cases, and the avoidance of at least apparent congestion before the Commission will be impossible.

But the matter has another aspect that is more serious than mere congestion. This other aspect is the moral or psychological effect upon individual applicants. It must be remembered that all applicants for disability pension are persons having a real or imagined disability. Such persons having before them the prospect of compensating allowance by the country are bound to be disturbed in spirit and have their attention distracted from the ordinary affairs of life. They will not be able to give their attention to earning their livelihood, and their disability being constantly in their minds will be magnified out of proportion to its real extent. Nor will they alone be affected. Their unrest will be communicated to the community in general.

It is thought that any reasonable man to whom these considerations are suggested will realize the significance of the situation and the necessity for a provision that when claims are presented they must be completely prepared by applicant and finally disposed of by the pensioning authorities with reasonable expedition. The salutary provision of the 1930 legislation which permits the re-opening of a case on discovery of new and material evidence should be maintained. The second item on the list of complaints for investigation was that of delays—length of time taken to get a final decision.

It is a fact that, at least up to the present time, under the machinery created by the 1930 legislation, the obtaining of a final decision on a pension application has involved very considerable time. The claim, assuming it to be fully prepared, must be considered by the Commission and if refused, considered by the Tribunal, and if appealed, considered by the Pension Appeal Court. Information before the Committee was that even as late as July, 1932, the Tribunal was dealing with a number of cases which had been reported to the Tribunal as ready for hearing over one year previously.

The Pension Appeal Court, as has been shown, has arrears which will occupy, at the present rate of proceeding, a period of eleven months.

So far as the Tribunal is concerned, the situation is improved. The total cases before that body as at the end of July, 1932, was 2,000 cases, and it has a capacity up to 400 cases per month. Indications are that the Tribunal should very soon be in a position to deal with cases within, say, two or three months of their having been reported as ready for hearing.

This rate of progress must, to considerable extent, be modified by considerations of economy. For instance, if there be but one case and that of a minor disability, ready at a remote point, it is obviously not to be expected that a quorum of the Tribunal, with its deputy registrar, clerical staff and reporters, and the Pensions Advocate and Commission Counsel, should be required to travel long distances to hear the one claim.

Assuming the establishment of the Pension Appeal Court to be amended as suggested, the Court, when arrears have been overtaken, should be able to hear appeals as they are ready for presentation. This would mean that the interval between Tribunal decision and Court hearing would not be much greater than the time necessary to transcribe the evidence given before the Tribunal.

The subject of delay or congestion should not be dismissed without drawing attention to the fact that the machinery created by the 1930 legislation commenced to function when an enormous number of claims had accumulated and were being put forward in very large volume. As has been seen, the claims from 1929 to 1932 were four times as many as in the preceding four years. They numbered 63,860.

It has been suggested that the county court judges be pressed into service. Were the whole judicial machinery of the Dominion conscripted, the accumulation could not very readily be disposed of. The handling of pension claims necessitates personnel familiar with military documentation and Departmental records. This information, a large proportion of the judiciary would need to acquire.

The proposal to employ the judiciary entirely overlooks the fact that the capacity of the Veterans' Bureau is based upon continuous sittings of the Appeal Court and of quorums of the Tribunal and that the proposal contemplates concurrent hearing of cases by the county and district judges throughout Canada. It will take months, if not years, to select and train the necessary additional personnel. The average applicant, having no experience in military documentation, nor in extracting relevant material from Departmental files, and no knowledge of medical science, appearing as his own advocate before a judge similarly lacking in experience, would be in a sorry situation.

Nor can the present pensioning bodies be expected to operate with greater speed, except to the extent that results from greater efficiency acquired by their personnel and that of the Bureau. The most trivial claim, measured by extent of disability, may require extensive investigation of fact, and involve intricate medical questions. Decision of a claim of a dependent or person having a high disability must receive the most careful consideration. It involves for the applicant, either an annuity which will assure a reasonable existence, or being cast helpless upon the charity of the community. It involves for the Country, a large amount of money to be found by the taxpayer. The high disability claim or widow's claim may be roughly estimated as a capitalized value of about twenty thousand dollars.

The third item of complaint is the question of Commission Counsel Appeals. The Submission of the Associated Veterans draws attention to the number of Commission Counsel appeals.

It was not within the authority of the Committee to consider individual cases, that is, to investigate cases with a view to ascertaining whether the decision of the Tribunal on the one hand or that of the Appeal Court on the other, was the more sound and reasonable. It can only be said that the ratio of successes of Commission Counsel on appeals appears to justify the appeals heretofore taken by the Commission.

Complaint listed as Number 4—The question of liaison between the various bodies dealing with pensions.

This subject is mentioned in Para. 6 of the Submission of the Associated Veterans of January, 1932. It was not further developed before the Committee. That is, none of the spokesmen of the returned soldiers' organizations, up to the Committee adjournment of September 30, gave any instance of lack of liaison or example of how liaison might be improved.

The Pension Appeal Court and Pension Tribunal being separate and independent courts, it is not apparent how liaison can be maintained, except through the decisions of the former and the reasons delivered therewith, which will be referred to in connection with the Complaint numbered 6.

Complaint numbered 5.—The qualification of men for the position of Pensions Advocates.

This subject was dealt with by the Committee, and it appeared that, as in the case of almost any appointment, the primary qualification of the appointee must be character, which includes integrity, industry and ability. Subject thereto, the requisite qualifications were stated to be: (1) experience with and knowledge of military documentation, the Pension Act and procedure thereunder and preparation of pension claims, and (2) legal training.

No evidence was brought before the Committee to establish that any individual advocate was unfitted for his appointment nor any evidence of any complaints of a general nature as to the conduct or ability of any advocate.

Complaint numbered 6—The availability of decisions and reasons of the Pension Appeal Court to the Tribunal, the applicant, or for the applicant's head office file.

The Statement of the Associated Veterans states: "We believe that—the Members of the Tribunals are not adequately informed as to the rulings of the Court of Appeal, and consequently, go on repeating errors which have already been corrected by the Court of Appeal". And again, "While" the Appeal Court "does, in fact, give reasons for judgment, such reasons, so far as we know, are not made public, nor are they available to the Tribunal." The evidence before the Committee established that from the day the Appeal Court commenced to function, all written reasons for decision have been brought to the attention of the central office of the Tribunal at Ottawa, and the Court's record of the case, including such decision, loaned for perusal and the making of extracts or copies, as required. Copies of all written reasons are furnished by the Court to the Veterans' Bureau and Chief Commission Counsel, and the Court records are available at all times to Pensions Advocates and Commission Counsel.

Chief Pensions Advocate stated that in all cases reasons of the Court are brought to the attention of the Advocate acting in the case, and that reasons containing matter of general information are circulated to all Advocates.

Copies of, or extracts from, reasons which the Chairman of the Tribunal considered to contain rulings of a general nature have been furnished to Members of the Tribunal.

The Committee was of opinion that all reasons for decisions delivered by the Court should be made available to members of the Tribunal.

Complaint numbered 7—Recommendation numbered 8 of Submission of Veterans—The suggestion has been made that the Crown on occasion, relies upon unsworn opinion, unsworn investigators' reports and even anonymous letters, for facts to repel the claim of the applicant.

This complaint has not been amplified in any way by any spokesman of the returned soldiers' organizations. No specific instances was cited where reliance was placed upon such documents or evidence, or where such documents or evidence appeared to have been accepted by and formed the basis of a decision by the Pension Appeal Court or Pension Tribunal.

As to the Board of Pension Commissioners—it is well known that this body had necessarily to adjudicate on claims on the basis of written certificates, statements and reports of such investigation as might be made in an individual case.

The Pension Appeal Court submitted to the Committee certain copies of reasons for decision in cases in which investigators' reports were of record in the file. These decisions indicate that the attitude of the Court is that investigators' reports are regarded as hearsay and not as proper evidence of facts. Such reports are either disregarded by the Court or, by reason of their having been upon the files for a number of years to the knowledge of the applicant, are considered as constituting prima facie evidence of circumstances which it is the duty of the applicant to meet by evidence presented in support of his claim.

Complaint numbered 8—The application of the "Benefit of the Doubt" clause.

The Pension Appeal Court produced to the Committee an extract from an address of His Lordship the President of the Court on the occasion of the opening of the Court on 2nd February, 1931, and copies of reasons for decision involving the interpretation of Sec. 73 of the Act. It has been stated by members of the Committee who considered this material, that the President, in explaining his conception of the Benefit of the Doubt section, went as far in favour of the applicant as was reasonable, and possibly beyond an interpretation which might be put upon similar words by a civil court. It was also stated that no exception could be taken to the "Reasons" of the Court interpreting the intention of Parliament, as expressed in the section.

In statements made before the Committee, by spokesmen of the pension adjudicating bodies, it appeared that length and nature of service is always an impelling factor in the consideration of claims, and that degree of proof required to establish attributability might be said to vary in inverse ratio with the length of service and stress and strain involved.

Representatives of the returned soldier organizations, who were witnesses before the Committee, alleged in general terms, that the benefit of the doubt section was not applied by the Commission and the Appeal Court. Several cases which had come before the Appeal Court were cited as examples, but when considered, it was apparent that the decision in these had turned upon onus of proof and were dealt with by the Court by being remitted for further evidence, or the appeal by Commission Counsel allowed because of there being insufficient evidence of fact to raise a reasonable doubt in favour of the claimant.

Considerable confusion seems to have arisen by reason of the fact that in the formal decisions of the Tribunal, Sec. 73 is expressly mentioned. In the formal decisions of the Court, there is no reference whatever to Sec. 73. It was explained to the Committee that the Court considers, as a matter of law, that entitlement can only be granted under Sec. 11, and that Sec. 73 permeates the Act, and is regarded as the spirit of the Act, always present as a guiding principle, and not necessary to be particularly referred to.

By considering what has actually transpired since the 1930 amendment, some inference may be possible as to whether or not the benefit of the doubt section has been effective.

In the foregoing pages, it has been pointed out that favourable awards by the Commission, during the past four years, have greatly exceeded the number in the four years immediately preceding. For instance, in the year 1932, there were 3,857 favourable decisions by the Commission, as compared with 2,452 in the year 1928. When it is considered that 1928 was 10 years after the Armistice, and that it is now 14 years since the war, one is inclined to think that the Commission must be rather lenient as to the extent of proof required and must lean rather heavily upon Sec. 73. There was before the Committee, an analysis of 4,173 cases which had been considered by the Commission, and in many instances, also by the Federal Appeal Board, and dealt with adversely to applicant. It was shown that on the basis of results of proceedings before the Tribunal and the Appeal Court, it is to be expected that of these 4,173 cases, about 1,146 will result favourably to applicant. In other words, that as the result of the 1930

legislation, out of this group, there would result an increase in pension of approximately 27·5 per cent. In the result, although it has been alleged in general terms that the benefit of the doubt section has not been operative, all definite indications suggest that the Act must, since 1930, have been very liberally construed in favour of the applicant.

Complaint numbered 9.—Recommendation number 9 of Veterans' Submission. More extensive examination into the etiology of T.B. cases.

Recommendation Number 9 of the Submission of the Associated Veterans is as follows:—

"That in cases of tuberculosis where attributability to service is not obvious, the Board of Pension Commissioners shall, before disposing of the claim, send the applicant with all his documents and evidence, to a duly recognized sanatorium, requesting, after complete examination and study of his condition, a report as to whether the existing disease is probably attributable to service."

This recommendation cannot be adopted as mandatory upon the Board of Pension Commissioners. The disease of tuberculosis is widespread throughout this country, and is not, so far as knowledge goes, a disease particularly prevalent amongst the returned soldier body. It is perfectly obvious that the mere fact of discovery of tuberculosis in a returned soldier in the year 1932 will not justify a special examination by a chest specialist, because his opinion, without reasonable evidence of continuity since the service period must be valueless. On the other hand, assuming that there is reasonable evidence of continuous or intermittent ill health since the service period, examination by a chest specialist with the aid of modern appliances might add information which would be very material in determining the question of attributability.

Each case must be dealt with on its own merits, that is, on the basis of the evidence upon which it is sought to be supported.

Complaint numbered 10.—Recommendation 10 (*c*) Veterans' Submission, to examine regulations *re* Class 1 and Class 2 treatment, to ascertain the manner in which these regulations are being administered.

This is not a matter of falling within the scope of the authority of the Committee. The Committee was appointed to inquire into the administration of the Pension Act. Treatment is authorized under the regulations of the Department of Pensions and National Health.

Complaint numbered 11.—The large number of successful Crown appeals before the Pension Appeal Court, with a view to ascertaining if there is any defect in the system which produces that result.

The report under complaint, numbered 3, applied also to this subject.

There is no evidence before the Committee pointing to any defect in the system of pension administration which can be held accountable for the large number of successful Crown appeals before the Pension Appeal Court.

The Pension Appeal Court and the Pension Tribunal stand in the same relationship to one another as any Court of first instance, civil, or criminal, and any court to which an appeal lies.

The Veterans' Submission states that Commission Counsel on appeal had a very high ratio of success, and a very much higher percentage than obtains in ordinary civil procedure. No evidence was produced to the Committee, of statistics as to the percentage of successes of appellants as opposed to respondents in the ordinary civil courts, nor was it even stated to be common knowledge or common understanding that appeals in the ordinary courts of the land generally result adversely to the appellant.

The Appeal Court and Tribunal have functioned much as the ordinary civil courts; that is, appeals have been taken from the latter to the former, and decisions rendered by the Court were accompanied, in a large number of cases, by written reasons. These reasons have, as has been stated in reference to complaint numbered 6, been brought to the attention of the central office of the Tribunal at Ottawa.

This complaint deals with a matter which is bringing anxiety, distress and bitter disappointment into the lives of many individuals. Many applicants are obtaining favourable decisions from the Tribunal; their hopes are raised, and some no doubt assume that they are assured of pension. An appeal is launched by Commission Counsel, and after months of waiting, the favourable decision is reversed. This subject, together with that of congestion or delay, which may be considered largely consequent upon congestion, constitute the two substantial complaints before the Committee.

The Submission of the Associated Veterans', in this connection, contrasts decisions of the Tribunal and Court, and stresses the cases of Commission Counsel appeals; that is, where there has been a favourable Tribunal decision reversed by the Court.

In order to gain a true perspective, it is necessary to consider, not two of the three pension adjudicating bodies, but the three pension adjudicating bodies, the Commission, the Tribunal and the Court, and to have regard, not to one class of case only, but to all cases dealt with.

The Submission of the Associated Veterans states that approximately 60 per cent of Commission Counsel appeals are allowed by the Court. The figure may be slightly high, and since it was based on early decisions of the Tribunal, may not represent the actual percentage at the present time. But it is correct to say, and is a regrettable fact, that during the period of operation of the Court, approximately 60 per cent of Commission Counsel appeals have been allowed, that is, that of decisions favourable to applicant which are appealed by Commission Counsel, approximately 60 per cent have been reversed.

The same group of cases which formed the basis of the calculation by the Associated Veterans, of the divergence between the Tribunal and the Court, had, in the first instance, been dealt with by the Commission. A comparison of the Tribunal and the Commission is therefore possible. All the applications which came before the Tribunal had been dealt with adversely to applicant by the Commission, in that entitlement had not been conceded. Certain Tribunal decisions were not appealed by Commission Counsel, indicating that as a result of new evidence presented to the Tribunal, the Commission would concede entitlement. The appealed cases represent divergence of view between the Commission and the Tribunal on the basis of the same record and evidence. This divergence was approximately 75 per cent; that is, while the divergence between the Court and Tribunal was approximately 60 per cent, the divergence between the Tribunal and the Commission was 75 per cent.

Considering all three pension and adjudicating bodies in relation to one another, and having regard to all cases dealt with, and not one class of case only, the divergence, so far as can be estimated, is, as between the Tribunal and Commission, approximately 40 per cent, and as between the Tribunal and the Court approximately 29 per cent.

As has been stated, the subject of divergence in decision is as important as any matter which confronts the Committee. Unfortunately, there appears to be no means of arriving at the underlying causes. The direct way would be by investigation of individual decisions, to ascertain if those of any one or more of the bodies concerned, indicated general unsoundness. Such investigation is not within the scope of authority of the Committee. Even such direct method might not produce definite and satisfactory results.

There remains only inference or speculation from such indications as may exist. It will be observed that, whilst there is a wide divergence between decisions of the Tribunal and those of both the Court and Commission, the divergence as between the Court and the Commission is very slight. It is possible that a substantial portion of such divergence as does obtain between Commission and Court may be accounted for by findings of fact by the Tribunal which are binding upon the Court, rather than by difference in viewpoint.

Where the attitude of two bodies practically coincides, and that of a third is in striking contrast, it is not unnatural to suspect that reason lies with the majority.

Some of the spokesmen of the returned soldier body, before the Committee, were rather generous in their expression of confidence in the Commission and the personnel thereof. This profession of confidence would hardly be expected if the conviction were entertained that the Commission was wrong in 40 per cent of the cases referred to the Tribunal.

The witnesses before the Committee made no general criticism of the decisions of the Tribunal. One witness, a lawyer by profession, and a gentleman who had had very considerable experience in pension matters, speaking from personal observation, stated that, although the members of the Tribunal were men of standing, of intelligence and of integrity, some of them had no legal training. He said, moreover, that some of the advocates were similarly handicapped. His experience was that, in consequence of this lack of legal training or similar experience, some members of the Tribunal were quite unable to appreciate requirements as to evidence and proof, and that for this reason their decisions could not have any sound foundation. His proposition may have been somewhat overstated, but the very large proportion of cases remitted by the Court on the ground of the record being incomplete and unsatisfactory would suggest that there is some justification for his statement.

The criticism of the Court on the part of witnesses was largely by individuals with no actual knowledge of the individual cases and lacking training and experience which would render them competent to judge as to the merits of decisions. From individuals who were familiar with the work of the Court and competent to express opinions, there was no allegation that the decisions of the Court were other than fair and reasonable and in accord with justice.

Under the system of jurisprudence which obtains, the decisions of the Court of last resort must be taken to be correct. Moreover, the Committee cannot shut its eyes to the fact that the President of the Court is an eminent jurist, formerly a member of the Provincial Court of Appeal. During a period of seventeen years on the Bench, deciding important civil and criminal actions, he commanded the respect and confidence, not only of the Bench and Bar, but of his fellow citizens. In the circumstances, his association with any decision must be taken as establishing its soundness, in the absence of very direct evidence to the contrary.

Complaint numbered 12.—The suggestion that the Court of Appeal has resort to documents and evidence not before the trial court.

Nothing whatever was brought to the attention of the Committee in connection with this complaint.

Complaint numbered 13.—Is the present system of assessment satisfactory, or should some reviewing body be established?

In the past, the Board of Pension Commissioners, or two representatives of that body, have travelled at intervals throughout the Country to investigate complaints as to assessment. This practice should be continued and arrangements made to the end that so far as possible, all complaints appearing to have some probable foundation should be investigated.

Complaint numbered 14.—Are Commission Counsel properly instructed in their duties or do they display partisanship and a desire to defeat the claim.

Evidence before the Committee did not establish undue partisaniship by Commision Council. Objection on the part of applicants, to Commission Counsel, in particular cases, would seem to arise only out of the manner of the Counsel in conducting his examination, which is dependent upon his individual character and temperament, and not upon any special desire to defeat the claim. Objection by litigants to opposing counsel is not confined to pension matters.

If there be any shortcoming in the performance of their duty by Commission Counsel, it would seem to lie in failure to adequately assist the Tribunal by causing evidence of essential facts to be brought out at the hearing.

Complaint number 15.—Can jurisdiction be vested in some authority to grant or refuse leave to an applicant to proceed before a higher court?

This inquiry must be answered emphatically in the negative. To do so would be to set up another judicial body. Every individual must have unrestricted access to existing judicial bodies, and in the last analysis he wishes to proceed to trial or appeal. Besides the objection on principle to such a proposal, the arrangement could not but aggravate the delay as to which there has been complaint.

Complaint numbered 16.—Are adequate facilities provided for the preparation, presentation and hearing of the cases of non-residents of Canada.

The Veterans' Bureau has no advocates or other personnel except in Canada, and no extension of its operations can be considered until at least the existing accumulation of cases has been disposed of. The Bureau is therefore available to non-residents of Canada only by correspondence, and the facilities for preparation by such non-residents are, in comparison with residents of Canada, inferior. As to presentation of his case, the non-resident is at the disadvantage of being unable to appear personally before the Tribunal unless he can provide his own transportation to the Canadian border. The non-resident is not in as favourable a situation as the resident, but having regard to the realities of the matter, it cannot be said that the facilities provided are inadequate. So far as the United States is concerned, it was in evidence that the American Red Cross Society and United States Veterans' Bureau had co-operated splendidly in investigating cases. A suggestion was made before the Committee that if home conditions should, at a later date, permit, Pension Advocates might visit those centres in the United States where there is a considerable concentration of Canadian ex-service men.

Complaint lettered A.—The question of collection of legal fees, Sec. 19 and 43 of the Pension Act.

The Committee were unanimously of opinion that the present provisions of the Pension Act in this connection are salutary. It was the unanimous decision that a recommendation be made that the making of charges to applicants for pension contrary to the provisions of the Act shall be made an indictable offence, in order that legal proceedings against offenders might be taken notwithstanding lapse of time.

Complaint lettered B.—Statement made in Parliament reported in Hansard 1932, page 1943.

This matter has been adequately dealt with incidental to consideration of the question of congestion.

Complaint lettered C.—That the cost of administration of the various bodies adjudicating as to eligibility to pension is unnecessarily high.

There was no very direct evidence before the Committee in regard to this item. Assuming that pension claims must be adjudicated upon and recognizing that there is an accumulation of arrears amounting to about sixteen thousand cases and that the present machinery is overburdened thereby, no sweeping economies would appear possible.

Complaint lettered D.—The extent to which fraud has been discovered and pensions improperly paid.

The Chairman of the Board of Pension Commissioners cited instances in which pension had been paid as the result of fraud and misrepresentation and perjury. Sufficient information was not available upon which it could be alleged that fraud was wholesale or out of proportion to the amount of moneys disbursed

by way of pension. The Board of Pension Commissioners should, as occasion permits, review cases in which pension has been put into payment with a view to discovering any irregularities which may exist.

Complaint lettered E.—Letter of Mr. Pettigrew, Calgary.

This letter does not deal with any subject matter which falls directly within the scope of an investigation into the administration of the Pension Act.

Complaint lettered F.—Re-payment to Federal and Provincial agencies.

This is a matter of government policy and not of administration of the Pension Act.

Complaint lettered G.—Widow receiving Imperial Pension but not augmented to Canadian rates.

This is a matter of government policy.

Complaint lettered H.—Case of No. 434798, Walker, John A.

This case was brought to the attention of the Committee and a sub-committee recommended that it be added to a list submitted by Mr. Bowler to the Committee.

Mr. Bowler, on appearing before the Committee, submitted a list of some 30 to 40 cases which he recommended to the consideration of the Committee. On being asked if the cases had been submitted on any basis he stated—

"They are merely results of complaints which we have received, but have not gone into, and I submit them to you; or rather, in submitting them to you we make no contention other than to say there have been complaints."

Asked—

"They have not been submitted as what you might call sample cases?" he answered—"No."

It was ruled as not being within the scope of the authority of the Committee to investigate individual cases. Had these cases been analyzed and presented as type cases illustrative of some weakness or defect in the administration of the Act, something might have been done by the Committee. But they were submitted simply as cases as to which complaint had been received, and the fact that they were submitted by the official spokesman of the Canadian Legion without even having been looked into would not seem to justify the expenditure of time by the Committee thereon, were it authorized or disposed to investigate them.

Complaint lettered I.—Provision for payment of pension to a widow in case of desertion.

This is a matter not of administration of the Pension Act but of conditions of entitlement to pension.

SUMMARY OF COMPLAINTS AND GENERAL REVIEW OF THE OPERATION OF THE ACT

In the foregoing pages, the various complaints before the Committee have been dealt with in detail. Of these complaints, the important ones are those regarding alleged congestion and delay and divergence of decisions, meaning allowance by the Appeal Court of appeals by Commission Counsel. These complaints must be considered in relation to the 1930 legislation.

The reason of the reorganization of the pension machinery in 1930, was the demand of the organized veterans that an applicant should have an opportunity of appearing before the pension adjudicating bodies and presenting such evidence as he may have in support of his claim. The demand was apparently recognized by Parliament as being a just one, and provision was made for personal appearance of the applicant.

The method adopted for effectuating the purpose appears, in the light of subsequent events, to have been unfortunate. The Commission which had been in existence and charged with the administration of the Act in general, including entitlement, was continued. The Commission could very readily have been enlarged to permit of public hearings of applications which were not susceptible of being established by means of documentary evidence. But the Tribunal was brought into existence as a body with limited jurisdiction, and became an additional court of first instance dealing with entitlement. No logical reason for such arrangement is revealed. The difficulties which have arisen thereout are many, and the additional expense very considerable.

The function of the Tribunal is the conduct of personal hearings and the personnel is available for this duty only, whereas the greater number of grants of entitlement are based on documentary evidence. Had the additional personnel been appointed to the Commission, it would have been available to deal with applications at the headquarters, or to conduct public hearings according to the necessities of the moment.

Had it not been for the extreme number of applications for pension beginning with the year 1929, that is, had the yearly applications remained at about 4,000 as theretofore, instead of increasing to over 15,000, the machinery of 1930, though complicated, consequently slow and involving long delays and above all unduly costly, might have operated after a fashion. But the weight of applications has been beyond the capacity of the machine.

There has resulted an enormous accumulation of cases. Of these, the evidence establishes that 75 per cent have no prospect whatever of success, probably only about 10 per cent can be expected to succeed and only a small proportion are actually supported by evidence and ready for hearing by an adjudicating body.

No estimate is possible as to the rate at which the accumulation of unprepared cases can be prepared for adjudication.

Since the number of applications during the last four years has been so enormous and out of proportion with the preceding period, it is a reasonable inference that when the accumulation is disposed of, there should be a very substantial decrease in current applications, at least in respect to disability pensions.

The present situation demands that the machinery of adjudication be simplified and made more readily operative. The obvious solution would be to dispense with the Tribunal which is a duplicate court of first instance, to add personnel to the Commission and confer necessary authority to conduct public hearings.

In view of the probability that after the accumulation has been disposed of, the number of current applications which may be expected in future will be greatly reduced, the establishment of the Commission might be based on a relatively small number of permanent appointees with additional members appointed for a term of years.

It was definitely established before the Committee that divergence of decisions has been beyond reasonable bounds. Failure to reach a jurisprudence common to the adjudicating bodies and the lack of uniformity in the application of the provisions of the Pension Act regarding entitlement is evidenced by the large number of Commission Counsel appeals and the large proportion of such appeals in which a favourable decision of the Tribunal is set aside.

The adjudication of the Appeal Court must be accepted as standard, and statistics show that whilst Tribunal decisions were reversed to the extent of about 60 per cent, the divergence as between the Court and Commission was within reasonable limits. This fact suggests that if the established jurisprudence of the Commission were maintained, there would be few Crown appeals and few favourable awards upset. Finally, the testimony of the adjustment officers of

the veterans' organizations and of others directly concerned in the presentation of applications, warrants the statement that the Commission enjoys their confidence.

The action suggested above, of charging the Commission with conduct of public hearings, is therefore indicated as a remedy for the divergence as well as for congestion and delay.

The following additional observations as to the operation of the Act appear warranted:—

Although in the scheme of adjudication upon entitlement, the Pension Commission is a judicial body, the 1930 legislation provided that the Crown should be represented before the Tribunal by a Commission Counsel under the direction of the Commission. The legislation also provided for appeals by applicant or the Crown to the Pension Appeal Court. On appeals by applicant, the Crown's case as respondent was to be presented by Commission Counsel, and appeals in the interest of the Crown were actually taken and prosecuted by Commission Counsel. This placed the Commission in an invidious position. That is, being a judicial body and having dealt with a case and having decided adversely to applicant, it was required to represent the Crown's interests before the Tribunal and on appeal.

Under the 1930 legislation, as theretofore, the Commission is empowered to grant pensions on the basis of any evidence it may choose to consider, and the Commission does grant pensions to a number far exceeding those granted by the Tribunal in a corresponding period. It may be stated, without any implication of criticism of the Commission, that a body dealing with the mass of cases which now confronts the Commission (about 15,000 a year), must make an occasional mistake.

In the framing of the 1930 legislation, the general provisions empowering the Commission to cancel or suspend pensions were omitted, and a limited jurisdiction substituted. Its limited jurisdiction appears in Sec. 74. The Commission has no power, other than the limited one referred to, over Appeal Court or Tribunal decisions, and its powers over its own decisions is not quite clear. That is, there may be a decision given by the Commission in error, which the Commission cannot rectify and which conceivably may not fall within the powers of the Tribunal or Court. In other words, as to these decisions, there is no direct protection for the Country.

It was represented to the Committee that the hearings by the Tribunal, as provided by the 1930 legislation have been so formal as to upset the applicant and his witnesses and thereby militate against the interests of the applicant. It was suggested that more informal hearings might be arranged. Proceedings conducted in public must be conducted with due formality. It is not apparent how informality could be achieved without private hearings, and it is felt that open and public hearings are advisable, in the interests of the individual and of the Country at large. It may be taken as axiomatic that any proceedings held in private naturally excite suspicion.

The system of verbatim reports of proceedings involves considerable expense, and it has been suggested that that procedure be abandoned in favour of some such procedure as is followed in inquiries before magistrates, that is, where the substance or statements of witnesses is taken down in writing and the witnesses required to sign. Such a system may be practical in pension matters, but it is thought that the verbatim report is rather to be preferred in that it is practically impossible for one man to reproduce the thoughts of another otherwise than in the express language of the first. Also, the vast number of cases now remaining to be disposed of would practically preclude the recording of all material evidence in longhand, and the applicant or the Crown would doubtless be prejudiced on appeal. It has been established that individuals becoming pensioners in respect to one condition, frequently make application in respect to additional

disabilities. Having regard, therefore, to the probability of future claims, it would be advantageous if the record, at the outset, should contain a comprehensive account of the life of the applicant as regards his state of health and economic and domestic conditions. A great amount of time and expense could be saved if the applicant were to file a detailed statement of his case, with names of witnesses and the facts they are expected to establish. The commission could admit such facts as are not in dispute and in many cases the issue for the public hearing could be reduced to a small compass. It is conceivable that in many cases the Commission could admit all allegations of fact by applicant, and if entitlement were not conceded, an appeal would lie by applicant, on the record.

The present Pension Appeal Court is vested with authority to entertain appeals from any decision of the Pension Tribunal turning upon the interpretation of any provision of the Act. It is thought that Parliament intended that the Appeal Court should be available to deal with any question of interpretation of the Pension Act. If this were the intention, it has to some extent been frustrated by the fact that the Act deals in some considerable detail with procedure, and the Court's general jurisdiction is limited to appeals from the Pension Tribunal. That is, generally speaking, an appeal from the Pension Tribunal is a condition of jurisdiction of the Court. The jurisdiction of the Pension Tribunal is limited practically to claims for entitlement, and consequently is concerned only with a relatively small portion of the Act. Numerous questions arise before the Commission which cannot, by any means, reach the Appeal Court. It might be advisable to amend the Act to provide that the Appeal Court shall have jurisdiction to deal with all questions of interpretation of the Act, and may exercise that jurisdiction on any individual claim by the applicant, made under the Act, or on any stated case put forward by any department of the Government.

In accordance with the foregoing and subject to the detailed consideration dealt with therein, the following is recommended as a method and procedure for ajudication as to entitlement:—

1. All claims, as at present, to be made to the Commission in the first instance.

2. The Commission to investigate Government records, as at present, and make such other investigation as it deems necessary.

3. The Commission to be authorized to grant or refuse the application. This will permit the Commission to give all necessary consideration to a claim which prima facie suggests underlying merit, with a view to its being settled by negotiation, but to dispose expeditiously of claims having no apparent foundation. Any applicant whose claim is refused by the Commission shall have a right to be heard at a public hearing before a quorum of the Commissioners, in the same manner as cases are heard by the Tribunal under the Act, or, at his election, to have the claim considered upon documentary evidence.

4. Since the proper preparation of pension claims is of very great importance, the Veterans' Bureau should be continued as at present for the purpose of assisting applicant at all stages; that is, upon the initial application or upon hearing before a quorum or upon appeal. Upon refusal of a claim by the Commission, on the basis of documentary evidence, the applicant should be informed of the grounds of refusal, and at the same time should be fully advised of his rights under the Act. He should, in particular, be told that the refusal is not final, but that he has a right to further consideration upon documentary evidence or at a public hearing and that the Veterans' Bureau is available to assist him in his claim. It should be made clear to the applicant that such latter decision will be final, subject to appeal, and that it therefore behooves him to insure that his claim is supported by all available evidence prior to being presented.

5. Public hearings should be conducted with such simplicity and informality as is consistent with adequate reception and recording of evidence.

6. Applicant's right of appeal from a decision following a public hearing should be unrestricted, except as to time. It is suggested that an unfavourable decision be final if not appealed within three calendar months, subject as hereinafter suggested. There should be provision for appeal by applicant at any stage, that is, without a public hearing, on the record where it is adequate for the purpose.

7. There should be restored to the Commission the unrestricted right to vary, suspend or cancel awards heretofore made by it or hereafter to be made by it other than by decision following a public hearing. On such action being taken, applicant, if he so desires, should be entitled to a public hearing.

8. The necessity for representation of the Crown at all public hearings is questionable. Representation need not be mandatory, as at present, but the Crown should be entitled to be represented by Counsel and to call witnesses. This right might be expected to be used where the Commission, having an important or intricate case for decision, deems it advisable to ascertain if the Crown desires to intervene.

9. The basis of adjudication in reference to entitlement is, generally speaking, upon the record as created by the applicant. This applies to the period before and since the 1930 amendments. In other words, the Crown does not generally adduce evidence, but adopts the passive attitude of permitting applicant to establish his claim. Such being the position, it does not appear advisable to restrict the Crown's right of appeal or to have the case reviewed. But it is desirable that a time limit for appeal be adopted.

10. No decision favourable to applicant should be given following a public hearing until the record has been completed by the inclusion of the transcript of evidence and any exhibits. The record with the favourable decision should be submitted forthwith to Crown Counsel who should have a period of 30 days within which to consider appeal. At the expiry of 30 days, or at such earlier date as the Crown shall signify its intention not to appeal, decision may be communicated to applicant and implemented by the Department. If the Crown signifies an intention to appeal, the decision shall be notified to applicant who shall also be advised of the proposed appeal and that pending the outcome, the decision is ineffective.

11. Since, as has been stated, the record in the case is created by the applicant, the adoption of a 30-day time limit for Crown appeals would permit only of sufficient review to determine if a prima facie case has been established.

12. Adequate protection of the Crown necessitates the right to re-open a decision of the Court the Tribunal or the Commission following a public hearing where the same is shown to be based upon forgery, fraud or misrepresentation, or where information of material facts has been withheld, or where patent error has occurred. This purpose might be accomplished by vesting in the Appeal Court, jurisdiction on application on behalf of the Crown to order investigation of any such allegation at a public hearing of the Commission. The Court order would provide for communication of all the facts alleged, to the applicant, and that he should have reasonable notice and opportunity to answer by himself and his witnesses. The Commission should be empowered to make such order as the evidence might seem to warrant, subject to appeal to the Court.

13. At the hearing of the claim following cancellation by the Commission or Court and on appeal, the Commission and the Appeal Court should be entitled to take into consideration any disadvantage suffered by applicant in respect to the production of evidence by reason of lapse of time between the original award and the hearing following cancellation. It is also suggested that in the absence of evidence of fraud, pension should be continued to the

pensioner for a period of six months from the date of notification, with authority in the Commission and Court to continue the pension from time to time, on its being made to appear that the applicant is exercising due diligence in bringing his claim forward for hearing.

14. The duty of representing the interests of the Crown might be provided for by transfer of the Chief Commission Counsel and sufficient counsel and clerical staff from the Commission to the Department, under the designation of Pension Counsel. The functions of the Chief Pension Counsel appear from the foregoing. They would consist generally in considering all decisions of the Commission and taking such action under the Act as the reasonable protection of the interests of the Crown appears to demand.

15. The Appeal Court should be continued, As heretofore, it should be restricted to the evidence and record upon which the decision was based. But its authority should be definitely defined as that of a court of review, and the power of remitting should be continued. Decisions of the Court should be final, subject to provisions similar to those now in the Act for the reopening of cases. The Court should have discretionary authority to grant leave to appeal in special circumstances, notwithstanding the expiry of the time limit.

16. As has been observed above, the 1930 amendments created independent judicial bodies for adjudicating in respect to pension. The principle appears sound and its extension worthy of consideration. To this end, sufficient permanent personnel might be appointed to necessary adjudicating bodies on a basis similar to that under the Judges Act; that is, during good behaviour, subject to any condition as to age or residence provided in the Pension Act, and removable as a county court judge under the Judges Act. Additional personnel to handle the present accumulation might be continued on the present basis of appointment for a term of years.

17. The duties of advocates and counsel include administrative and what might be termed professional functions. In their administrative capacity they must be subject to their departmental head. It is suggested that as to their duties of a professional nature, that is as to any charge of impropriety, incompetence or neglect in the conduct of any application before the Commission or the Court, or the exercise of any discretion, as for instance, in deciding whether or not an appeal shall be taken, they be not subject to disciplinary action until the circumstances out of which any complaint arises have been brought to the notice of the President of the Appeal Court and his report had thereon.

18. Correct diagnosis being an essential requirement both as regards entitlement and assesment, it is recommended that discretionary authority be vested in the Commission to secure adequate medical examination at any stage between first application and final decision, and for this purpose to direct admission to any hospital under the Department.

19. It is suggested that the Board of Pension Commissioners be composed of not less than 5 and not more than 7 permanent appointees, including a chairman, with additional members appointed for a term of years to deal with the present accumulation. The present provisions of the Act regarding quorum of the Tribunal would be satisfactory if applied to the Commission.

20. It is suggested that the Pension Appeal Court be composed of not more than 3 permanent members including a president, and one temporary member. This would permit of two quorums of the Appeal Court, sitting concurrently, as outlined in the foregoing pages, to deal with the present accumulation.

21. Some spokesmen of the returned soldiers' organizations were of opinion that a portion of the Pension Commissioners should be of the medical profession. The evidence does not warrant a definite recommendation but it may be observed that an appropriate combination for hearing pension claims would be a lawyer

and a doctor. The experience of the lawyer would be valuable in the creation of the record, that is, in insuring that the evidence is the best obtainable and is material, and in sifting the evidence. The knowledge and experience of the doctor would be valuable, not for the purpose of giving decision on the basis of that knowledge and experience, but in directing the medical and other evidence along the lines necessary for consideration of the claim under adjudication. The presence of a doctor on the adjudicating body would render a medical adviser unnecessary.

22. In the foregoing pages, some reference was made to the subject of assessment of disabilities, and it was stated that representatives of the Board of Pension Commissioners from time to time visited various parts of the country, to make personal investigation of individual complaints regarding assessment. If the foregoing suggestion regarding travelling quorums of the Commission were adopted, the Commission could, without any formal procedure, readily arrange to investigate such complaints.

All of which is respectfully submitted.

(Sgd.) L. P. SHERWOOD,
(Sgd.) H. F. McDONALD.

Dated at Ottawa this 24th day of January, A.D. 1933.